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ABSTRACT

This document on legal and ethical concerns is one of seven staff development programs which target performance skills of school counselors. The staff development programs are one component of a comprehensive student-needs-based guidance system developed by the Pioneer Cooperative Educational Service Agency Guidance Project. The staff development programs are designed to be used by students who aspire to become school counselors, by entry level counselors who are seeking to demonstrate their skill for certification purposes, and by experienced counselors who wish to enhance their skills. The emphasis of each program is on performance. A format has been developed which uses behavioral indicators as the focus for activities. A basic knowledge of the area of functioning is assumed. Where this prerequisite knowledge is not present, selected readings and references are provided. This document addresses such topics as ethical behavior, the counselor as a professional, the confidential relationship and privileged communication, records and reporting, liability of counselors, ethical and legal conflicts and the future. (Author)

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PIONEER CESA

STAFF DEVELOPMENT PROGRAM for SCHOOL COUNSELORS

LEGAL and ETHICAL CONCERNS

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PIONEER CESA GUIDANCE PROJECT

A STAFF DEVELOPMENT PROGRAM
FOR
SCHOOL COUNSELORS

LEGAL AND ETHICAL CONCERNS

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A STAFF DEVELOPMENT PROGRAM
FOR
SCHOOL COUNSELORS

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WITH APPRECIATION TO

MARY LAM

and

JUDY BRADFORD

FOR THEIR EDITORIAL ASSISTANCE

Table of Contents

I. An Instructional and Examination Module

A. Rationale....................................1
B. Instructions for Using the Module..............2

II. A Perspective on Ethical-Legal Aspects of School Counseling

A. Purpose and Definition.........................3
B. Ethical Codes and Professionalism..............4
C. Activity I.....................................6

III. Ethical Behavior

A. Community Expectations and Demands.............6
B. Stages of Ethical Behavior.....................8
C. Activity II....................................9
D. Activity III...................................13
E. Activity IV....................................14
F. Flow chart for Ethical Decision Making, Figure 1.......................................16

IV. An Emerging Professional

A. Professional Status and Standards..............18
B. Legal Status...................................24
C. Inspection, Registration, Certification, Licensing......................................26
D. The Setting and Responsibilities...............27
E. Activity V.....................................28
F. Activity VI....................................31

V. The Confidential Relationship and Privileged Communication

A. Confidential vs. Privileged....................34
B. Confidential Relationship......................36
C. Privileged Communication.......................39
D. Statutory Protection...........................42
E. Activity VII...................................45
F. Activity VIII..................................46

VI. Records and Reporting

A. Constitutional Background....................47
B. Counselor's Records..........................48
C. Reporting Student Matters....................57
D. Activity IX..................................59

VII. Liability of Counselors

A. General Principles...........................60
B. Libel and Slander............................62
C. Professional Responsibility, Good Faith and Malpractice..66
D. Malpractice..................................67
E. Activity X...................................69

VIII. Ethical and Legal Conflicts

A. Possible Role Conflicts......................70
B. Unethical and Incompetent Behavior...........71
C. Value Problems in Counseling.................73
D. Activity XI..................................75
E. Activity XII.................................76
F. Activity XIII................................77

IX. The Future

A. Possible Litigation..........................79
B. Suggested Guidelines.........................80
C. Activity XIV.................................82

X. Notes..83

XI. Suggested Readings...........................90

XII. Appendices

A. APGA Ethical Standards.......................92
B. ASCA Code of Ethics..........................107
C. NEA Code of Ethics...........................113
D. Case of Ben Worried..........................120

Preface

This document is one of seven staff development programs which target performance skills of school counselors. The programs include the competency areas of: Planning, Individual Counseling, Group Facilitation, In-Service Training, Consultation, Information Processing and Legal/ Ethical concerns. While there may be other areas which will be helpful to school counselors, the skills described in this series are felt to be essential.

The staff development programs are one component of a comprehensive student needs based guidance system developed by the Pioneer CESA Guidance Project. The competencies which are addressed in these modules were derived from identified student goals related to guidance. The attainment of the skills described in the programs should facilitate counselors' clients in achieving these goals.

The staff development programs are designed to be used by students who aspire to become school counselors, by entry level counselors who are seeking to demonstrate their skill for certification purposes, and by experienced counselors who wish to enhance their skills. An individual may use the programs in an informal setting or they may be used in a more structured group of counselors pursuing a formal staff development plan.

The emphasis of each program is on performance; thus an effort has been made to avoid another textbook in the specified area. A format has been developed which uses behavioral indicators as the focus for activities. A basic knowledge of the area of functioning is assumed. Where this prerequisite knowledge is not present, selected readings and references are provided.

Upon completing each of the programs the participant should be able to successfully demonstrate the skills needed to be certified as competent in the performance area. Further, it is the hope of the project staff that the skills acquired through this series of programs will facilitate positive growth in the knowledge, skills and attitudes of the young people with whom school counselors have contact.

William B. Ware
Stanley Bernknopf

LEGAL AND ETHICAL ASPECTS OF SCHOOL COUNSELING

I. An Instructional and Examination Module

A. Rationale

This module is designed to help counselors intensify awareness of the ethical-legal problems encountered in the practice of guidance and counseling in educational settings. Topics such as professional codes of ethics and professional standards, ethical decision-making, legal and professional responsibilities of counselors, confidentiality, and liability of counselors are presented to aid the counselor in developing a working knowledge of the various legal-ethical aspects of school-counseling.

Law and ethics, as they pertain to the work of the counselor, are related topics and are often discussed together in this module. It should be noted, however, that some sections of the module deal mainly with ethical issues, while other sections focus heavily upon law and the counselor. We believe that this arrangement makes some general principles easier to follow and that it is more convenient for learning purposes.

While the material contained in this module is by no means exhaustive, it is designed to provide counselors with an awareness of the relatedness of ethics and the law as well as the influence of law and ethics upon their work. The module can be used by an individual or by a small group. It will be helpful to have a colleague assist by giving feedback on experiences. The length of time required to complete the module will vary as some people may wish to go beyond a working knowledge in one or more areas.

B. Instructions for Using the Module

As you proceed through this module you will find the following suggestions particularly helpful:

1. It is recommended that the module be completed in the sequence presented.

2. The major or key points are numbered and certain key words are underlined throughout the module.

3. Move quickly, do not spend too much time on minute points. Consider the key points, share your own ideas (if you wish) and move on to the next point without letting the discussion drag.

4. Ethical-legal aspects must necessarily focus more upon general rules and principles than upon specifics. Therefore, few maxims or right or wrong answers are presented. We suggest that you deal primarily with principles of law, the process of decision-making and the rationale for counselor actions, rather than upon right or wrong actions.

5. Avoid being judgmental or evaluative of others' ideas and options, particularly when dealing with questions and discussions related to the exercises and cases.

6. Refer to laws, codes of ethics, and professional standards or policies when appropriate. The list of readings at the end of the module should prove helpful to those who wish to study ethical or legal issues in greater detail.

II. A Perspective on Ethical-Legal Aspects of School Counseling.

A. Purposes and Definitions

The general purpose of this section is to introduce the ethical and legal aspects of counseling and guidance to help the counselor to understand the content of the module. The module will present such questions as: What are some *ethical issues* facing counselors? How can one decide which actions are *acceptable* and which are *unacceptable*? What are some *legal issues* in counseling? What are some *legal pitfalls* that should be identified?

In this module the term ethics is used to describe standards of professional conduct, particularly actions in relation to other people. These standards arise from some definition of individual or collective responsibility to others and are based upon the nature of the relationship to them (Van Hoose and Lottler, 1971). Law or legal refers to both statute and case law and to legal principles and precedents that may bear upon the counselor as an individual and as a professional.

B. Ethical Codes and Professionalism

Ethical codes of professional associations (APGA, ASCA) provide some guidelines on the professional behavior of practitioners. Such codes or principles formulated by professional associations represent a consensus of members' belief, concerns, and feelings about professional ethical conduct. While statements are quite useful to counselors, they do not always provide clear directions for action when ethical decisions are necessary. Rather, ethical actions taken by a counselor must also reflect counselor beliefs, values, prejudices, and experiences; therefore, it is necessary to examine one's own values. (At a later point in this document, this point will be more fully treated.)

Ethical codes are necessary:

1. To protect counselees from improper practices.
2. To protect the counselors from undue institutional pressures and as a basis for

defending actions therein on behalf of clients.

3. To protect the profession from practices that may result in public condemnation of the profession.

Ethical codes are essential to professionalism. A well developed and fully implemented code of ethics or standards of professional practice is generally regarded as a necessity for any group of workers to achieve professional status. The counseling profession is a good example of the need for such a code. Counselors and other professional mental health workers deliver a service rather than sell a product. The counselor's services are intangible; they cannot be touched, seen, measured or weighed in the manner of a product sold in a supermarket. This lack of readily observable data regarding worth of service places a heavy responsibility on the counselor to make certain that services are properly rendered and that ethical standards are observed.

Many professional associations have established specific procedures to be followed when violations of their ethical code have occurred. The American Psychological Association (APA), for example, has a committee which acts on charges of unethical behavior and often expels members found guilty. To date APGA and ASCA have not developed policies on or procedures for implementing their ethical codes.

C. Activity I

1. Read very carefully the APGA Ethical Standards and the ASCA Code of Ethics which are presented as Appendix A and B.

2. If you are working in a group, when all members have read the Ethical Standards you may wish to spend some time discussing some major points from the code. At this point you should be dealing generally with legal and ethical principles. Do not become bogged down in lengthy discussions of the Buckley Amendment, etc., as you will move to specific problems and issues later in the module.

3. If you are working through the module list any questions which were raised as you read the code. Keep this list as you will be referred to it later in the module.

III. Ethical Behavior

A. Community Expectations and Demands

Counseling as a professional activity is generally accepted by the community because it is considered to be worthwhile. However, both the community and the employing institution hold expectations for the professional counselor. For example, in their work with counselees, and to some degree in their personal conduct, counselors are expected to adhere to the standards of the community as well as support the policies of the employing institution. In some cases, these requirements create both ethical and legal problems for the counselor. Working with such counselee problems as drug abuse, pregnancy, and abortion is a good example of the conflict between community standards and/or legal concerns and the needs of the counselee. The need for a code of ethics or professional standards is clearly illustrated by this kind of conflict between the expectations and demands of the community/institution and the counselor's commitment to his counselee.

While ethical codes, such as those of APGA and ASCA, do not provide definitive answers on how to deal with these problems they do offer good directional guidelines and may in fact provide some legal basis for counseling actions. In fact, the courts have held that, in the absence of laws defining counselor behaviors, the professional code of ethics may be used as a guide in determining whether a counselor acted properly (Cherry v. Board of Regents).[2]

B. Stages of Ethical Behavior

Counselors are required to make decisions--both ethical and legal--and to accept the responsibility for the outcomes of those decisions. The rationale underlying ethical decision-making can be conceptualized within a model of five different stages of orientation, representing beliefs, preferences and values of the counselor as well as the level of ethical reasoning. This model, originally proposed by Van Hoose (1971), has been used by several counselors in their research on ethical behavior of counselors [Vafakas (1972), Moore (1976) and Paradise (1976)] and appears to be a sound way of viewing ethical behavior.

The stages of ethical behavior are:

Stage 1. Punishment Orientation - Counselor decisions and actions are based on a strict adherence to existing rules, standards, and laws; one must be punished for bad behavior.

Stage 2. Institutional Orientation - Counselor decisions, suggestions and actions are based on the rules and policies of the institution. The correct posture is based upon the expectations of higher authorities.

Stage 3. Societal Orientation - The maintenance of standards, approval of others, and the wishes of the general public characterize this stage of ethical behavior. Concern is for duty and social welfare.

Stage 4. Individual Orientation - The primary concern of the counselor is the needs of the individual, while trying to avoid violation of laws and rights of others. Concern for law and societal welfare is recognized, but is secondary to the needs of the individual.

Stage 5. Principle or Conscience Orientation - Concern for the individual is primary with little regard for the legal, professional or societal reactions. What is right, according to the counselor's ethical principles, determines ethical behavior.

C. Activity II

1. Read the following exercise and rank the patients in the order you feel they should be considered as the heart recipient. If you are working with a group, try to reach a group concensus on the top ranked recipient.

2. Take the ranked list and develop a brief rationale for your decisions.

NOTE: The purpose of this exercise is to illustrate partially some of the ethical dilemmas all of us face. There is no right or wrong answer. The exercise is more concerned with ethical decision making than with specificity.

EXERCISE

In the following situation, you are to arrive at an individual as well as a collective solution to the dilemma presented. The situation illustrates an ethical dilemma with no right answer. When you make the decision in your group you should do so with the understanding that you will not be accountable or have to justify your decision to anyone except yourself.

There are six people who are terminally ill with progressive heart disease. All six need a heart transplant immediately in order to have a chance to live. The hospital has just admitted a young man whose brain has been destroyed in an automobile accident and whose family has given permission for the removal of his heart. Surgery must be performed immediately. You are the surgeon who must decide which of the six people is to receive the heart.

1. Dr. James Williams is a cancer researcher. He is on the verge of a major breakthrough in immunizations against certain forms of cancer. He is 56 years old, married, and the father of three grown children. He is aloof, distant and self-serving. He has consistently neglected his family in the pursuit of his career.

2. Wilma Johnson is on welfare. She has five children and no husband. She is 35 years old, warm, friendly, a devoted parent and deeply religious. Her youngest child is six months old.

3. John Donovan is a promising artist. Critics claim he is a genius, a potential Picasso. He is 25 years old, gentle, sensitive and a homosexual.

4. Jack Davis is a black militant. He was in the forefront of the civil rights movement and over the past ten years initiated numerous social and recreational services for inner city youth. He is a tireless worker and a source of pride to his neighborhood. He is 34 years old, married, and has two

children in the elementary grades.

5. Bill Sweeney is a policeman who has received several commendations from his department. He has risked his life several times to save others. He is 47 years old, a widower, with 3 children in high school. He has openly admired George Wallace and Lester Maddox.

6. Melissa DeAngelo is a 15-year-old high school student. She is deeply into drugs, belligerent, abrasive, and promiscuous. She is a reckless sensation seeker, described by one social worker as "incorrigible." She does not seem concerned about anything.

The heart patient exercise illustrates some of the dilemmas in ethical decision making. There is no system of beliefs or ethics acceptable to everyone. However, counselors may find some value in analyzing their own behaviors and contrasting their ethical orientations with those suggested by the stages mentioned above. It should be noted that the authors do not suggest that one orientation is "good" and another "bad". Depending upon a person's beliefs and goals, he may choose--or may be required--to respond to some situations much differently than others.

(Activities III & IV provide further practice in ethical decision making.)

1. Form triads for the exercise and discuss each possible action.

2. Label that action according to stages discussed above.

D. Activity III

A young lady enters the counselor's office and tearfully confesses that she is pregnant. She states that she wants an abortion as soon as possible and seeks information from the counselor. She is 16 and without funds. She has had numerous affairs and has no idea who may be the potential father, stating "any one of 8 or 10 guys." She has not discussed the problem with her parents.*

Counselor Action

1. Suggest that blood tests be given to the several boys so that the guilty party can be made to assume his responsibility.

2. Give her appropriate abortion

counseling and information.

3. Suggest a conference with her parents.

4. Refer her to an outside agency who may help her make a decision about having the baby.

5. Tell the young lady that you cannot handle such problems and refer her to her family doctor.

6. Other.

7. Explain reason for your choice.

*Adapted from: Van Hoose, W.H. and Paradise, L. "The Ethical Judgment Scale," copyright 1977.

E. Activity IV (Optional)

1. Read "Drug-Using Counselees" (below) carefully. Check your decision or action.

2. Turn to Figure 1 (page 16), and follow each step on the chart. (Make notes and answer the appropriate questions as you follow the chart.)

3. Re-check your decision. Did it change or remain the same?

Drug-Using Counselees*

You are a senior high school counselor. Early in the fall semester you discover that several of your counselees are involved in the use of "hard" drugs. You secure medical advice on the effects of drugs and continue counseling with these students; but you do not inform the principal, the police, or the parents. A mother discovers that her son is on drugs. He advises her that the counselor has known for several weeks and "did not go to pieces over it." The mother demands that the counselor reveal the names of all drug users known to the counselor and enlists the support of several other anxious parents who make the same demands. They hint that legal action will be taken if he refuses to do so.

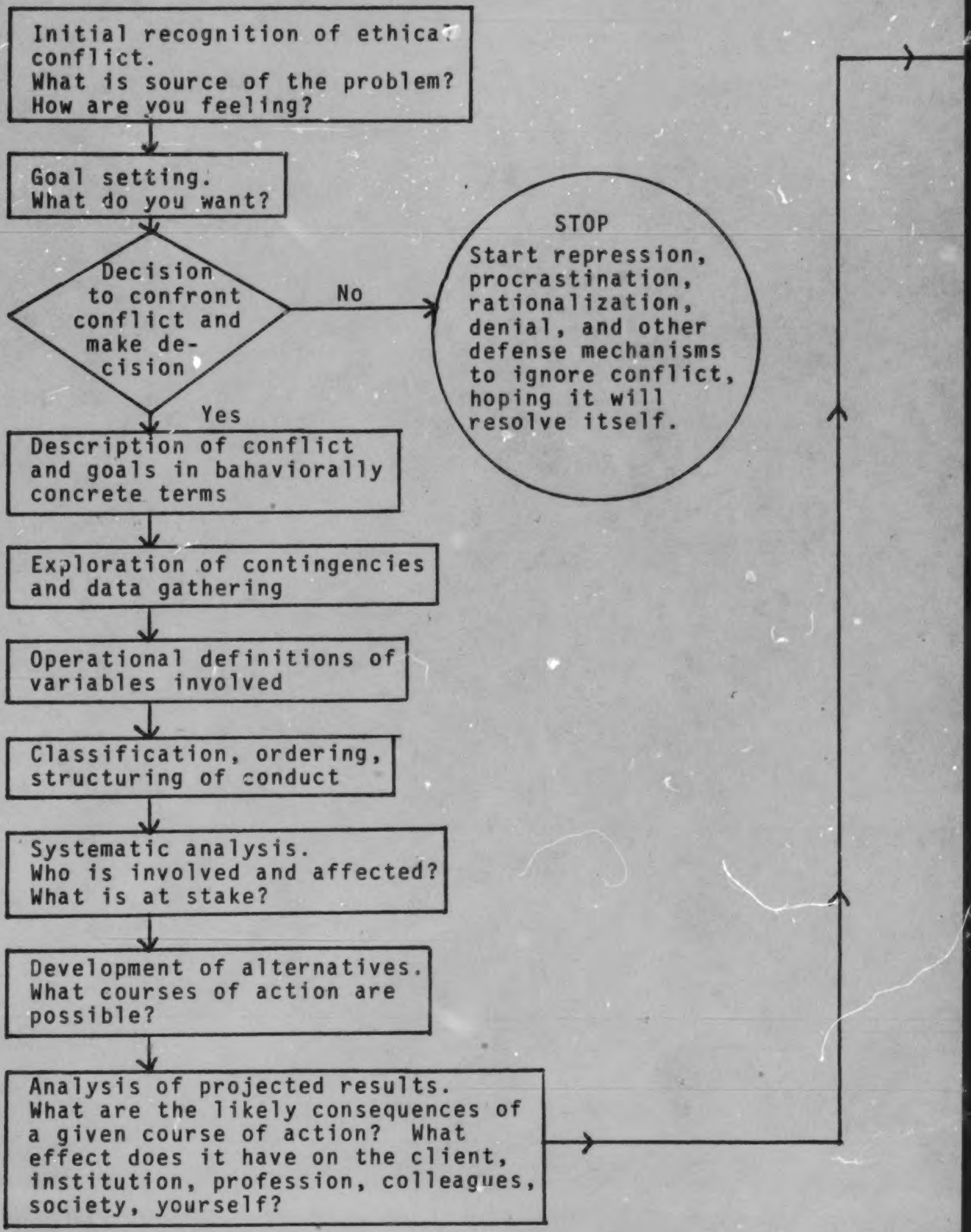
The Counselor Should (Select only one.)

1. Politely refuse, citing your ethical principles as a reason.

2. Explain to the parents that you have medical advice and you are actively working on referral and treatment, but that names cannot be revealed at this time.

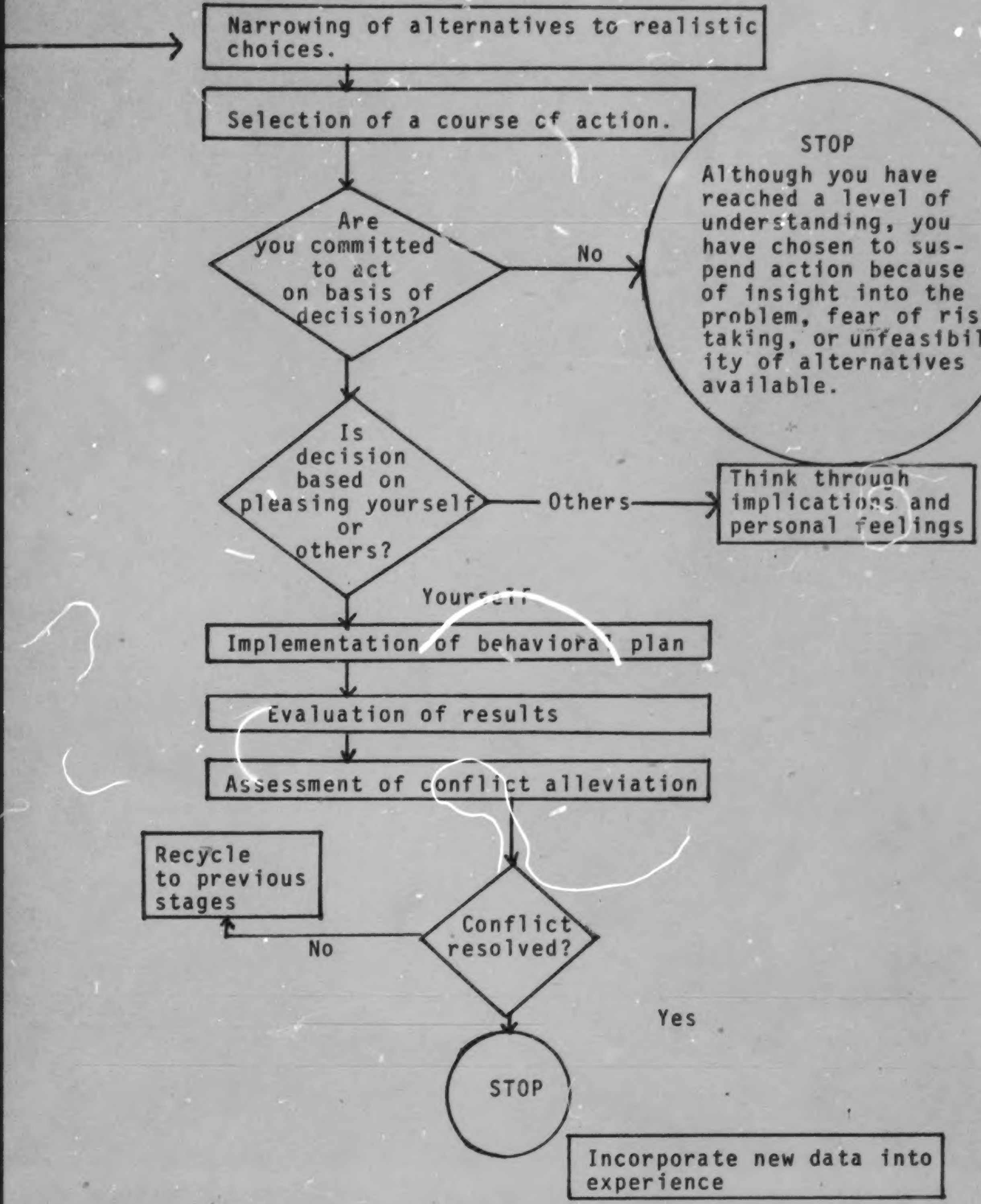
3. Explain your plans for treatment and advise parents that you will encourage any student on drugs to tell his/her parents.

FLOW CHART FOR ETHICAL DECISION MAKING* Figure 1


Initial recognition of ethical conflict.
What is source of the problem?
How are you feeling?
Goal setting.
What do you want?
Decision to confront conflict and make decision
No
STOP
Start repression, procrastination, rationalization, denial, and other defense mechanisms to ignore conflict, hoping it will resolve itself.
Yes
Description of conflict and goals in bahaviorally concrete terms
Exploration of contingencies and data gathering
Operational definitions of variables involved
Classification, ordering, structuring of conduct
Systematic analysis.
Who is involved and affected?
What is at stake?
Development of alternatives.
What courses of action are possible?
Analysis of projected results.
What are the likely consequences of a given course of action? What effect does it have on the client, institution, profession, colleagues, society, yourself?

Continued on next page

Figure 1 Continued


Narrowing of alternatives to realistic choices.
Selection of a course of action.
Are you committed to act on basis of decision?
No
STOP
Although you have reached a level of understanding, you have chosen to suspend action because of insight into the problem, fear of risk taking, or unfeasibility of alternatives available.
Is decision based on pleasing yourself or others?
Others
Think through implications and personal feelings
Yourself
Implementation of behavioral plan
Evaluation of results
Assessment of conflict alleviation
Recycle to previous stages
No
Conflict resolved?
Yes
STOP
Incorporate new data into experience

*From Van Hoose and Kottler, 1977
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4. Provide the names without delay.

5. Other.

6. Explain the reasons for your choice.

*Adapted from Christiansen, Ethics in Counseling 1975.

IV. An Emerging Professional

A. Professional Status and Standards

Counseling as a profession has undergone dramatic changes during the past twenty years. The counselor has moved from the relative security (and to some, obscurity) of vocational and educational information giving and student record keeping to group and individual personal counseling. Counseling has now been defined, in H. R. 3270, the 94th Congress, as "the process through which a trained counselor assists an individual or group to make satisfying and responsible decisions concerning personal, educational, and career development." With the emergence of this therapeutic aspect comes increased responsibilities, liabilities and higher ethical and professional preparation standards.

It is significant for the profession that a 1971 law review article[3] (quoting liberally from Shertzer and Stone) points out a new role for counselors in the "expansion and redefinition of the counselor's role from that of educational-vocational counseling to personal problem counseling." In arguing for privileged communication, the author also suggests a shift due to "the increasing numbers, quality and roles of school counselors indicating the potential importance of counselors as sources of aid for students with personal problems." The author further proposes that "the primary, if not the sole function of school counseling is to help students better understand themselves and their environments." This function is viewed as "personal problem counseling and encompasses the whole spectrum of personal difficulties which students encounter."

Illustrative of the increasing roles and diversity of counselors is one counselor education program where 100 percent of the 1969 graduates went into public school work whereas in 1975-6 only 14 percent went this route, with 86 percent finding employment in various agencies.[4] Recent modifications in state education department certification standards as reported by Woellner in 1976 and others[5] show a greater number of required courses in areas formerly not covered. These additional courses include Counseling Techniques, Counseling Theories, Group Counseling, Tests and Measurements (including "personality" testing), Human Growth and Development, Career Counseling and Supervised Practicum.

In response to the increasing complexity of the counseling role, training programs are being extended. The "Standards for the Preparation of Counselors"[6] notes that minimum study will increasingly extend beyond the one year program of graduate preparation. In summary form, this program at the Master's level would include course work in the following areas:

1. Human growth and development
2. Social and cultural foundations
3. The helping relationship, including
    a. Philosophic bases
    b. Counseling theory, supervised practice, and application
    c. Consultation theory, supervised practice, and application
    d. Emphasis upon development of counselor and client self-awareness and self-understanding.
4. Group counseling
5. Life style and career development
6. Appraisal of the individual
7. Research and evaluation
8. Professional orientation
9. Environmental studies
10. Specialized studies

11. Laboratory experiences
12. Supervised counseling practicum
13. Internship

The improved and enlarged training programs and the more stringent standards set by state departments of education and national counselor organizations should lead to the training of counselors better able to fill the extended counselor role. Training or preparation is only one dimension of the extended counselor role. Counseling which focuses in large part on the counselees' better understanding themselves and their environment also demands a more complex and higher degree of professionalism on the part of counselors.

Illustrative of higher professional care demanded are the 1974 American Personnel and Guidance Association _Ethical Standards_. These _Standards_ expect ethical behavior among professional associates, members and nonmembers at all times along with an obligation to take action to rectify non-ethical behavior of professional colleagues. The counselor should be fully aware of the Counselor-Counselee Relationship section which is highlighted as follows:

> To the extend that the counselee's choice of action is not imminently self - or other - destructive, the counselee must retain freedom of choice. When the counselee does not have

> full autonomy...the member must apprise counselees of restrictions that may limit their freedom of choice.
>
> The member's primary obligation is to respect the integrity and promote the welfare of the counselee(s)...and is responsible in a group setting for protecting individuals from physical and/or psychological trauma, and further the counseling relationship and information resulting therefrom must be kept confidential... and...in a group setting the member is expected to set a norm of confidentiality.

The APGA Standards clearly recognize the greatly expanded role of the counselor. These standards are not only necessary to protect the counselee but also to protect the counselor rendering the service. In personal counseling, a higher degree of care and attention is mandated or the doors of the courtroom will open wide to injured clients. In the past counselors have been considered more teacher than counselor and have not been held liable as would a therapist trained in medicine or psychiatry. The Bogust vs. Iverson[7] ruling is an example of treating the counselor as a teacher.

In Bogust[8] the plaintiffs (parents of a college student) alleged three acts of negligence on the part of the defendant (director of college student personnel), claiming this negligence resulted in the wrongful death of their daughter. Plaintiffs also alleged that the defendant had administered personality and aptitude tests; was familiar with the deceased's personal, social and educational problems; knew of her conflicting feelings, environment and social ineffectiveness; and was aware of her emotional disturbances. It was further alleged that the defendant suggested the termination of future interviews and as a result of this improper "guidance" the daughter suffered psychological and emotional injuries resulting in her suicide.

The trial court held and the opinion was affirmed by the Supreme Court of Wisconsin that for the termination of counseling to have been a negligent act it must be alleged that the defendant knew or should have known that the deceased would commit suicide. The court further recognized the defendant as being a teacher with a doctorate in education, not one skilled in the field of medicine or psychiatry. As a teacher, he could not be charged with the same degree of care based on such knowledge as a person trained in medicine or psychiatry.

Although this Wisconsin decision has not been overruled, it now appears open to challenge based on the emerging professionalism of counselors. Very few counselors today would describe themselves as "teachers." The 1974 Ethical Standards are reasonably interpreted as the duties and responsibilities of mental health professionals rather than vocational-educational guidance workers.

B. Legal Status

In a recent Virginia decision[9] the plaintiff, a counselor holding a master's degree in counseling and guidance, was enjoined from continuing his private practice because he was not licensed or licensable, by the Board of Psychologists Examiners. The Court further held that the appellant was practicing psychology and would be required to be licensed under the Laws of Virginia. The Count continued:

> I further feel that the profession of personnel and guidance counseling is a separate profession and should be so recognized. However I further feel that this profession does utilize the tools of the psychologist as does many other professions and consequently...there must be a regulatory body to govern this profession. [For the Appellant to be exempt from Code of Virginia, Section 54-102.14 (3).]
>
> I feel therefore that I am bound by this statute and since there is no regulatory body governing the profession of guidance and personnel counseling, I must uphold the Virginia State Board of Psychologists Examiners and deny that he may practice this profession as a private practitioner open to the general public.

In this opinion we see both progress and pitfalls. The ruling gave legal sanction to the "profession of personnel and guidance counseling. . . a separate profession." This legal status also requires that those privately or otherwise practicing this profession must be licensed. In Virginia, the Board of Psychologists Examiners has consistently denied the right to take the examination to applicants with the doctorate in counseling, guidance or personnel services, stating to one applicant:

> After reviewing your credentials, it is the opinion of the Virginia Board of Psychologists Examiners that you are a member of the profession of guidance and counseling rather than of psychology and that it must, therefore, deny your application for licensure.[10]

While clearly establishing counseling and guidance legally as a profession, the Virginia ruling prohibits an individual pursuing his/her career because no license to use the "tools of psychology" can be obtained.

This problem is certainly not limited to the State of Virginia. Some states will allow doctoral level counselors to take the psychologists examinations and apply for the license, while in other states the rigid interpretations of the existing laws are requiring separate licensing boards.

Virginia has now provided for the licensure of professional counselors for private practices by action of the 1976 General Assembly.[11] Other professionals now obtaining licensure or certification are Marriage and Family Counselors,[12] with regulatory bodies in seven states, and Educational Counselors, one state. Twenty-one states, including Alabama, Texas, Arkansas, Ohio, New York, and Georgia are currently considering the regulation of counselors.[13] As reported in the Wall Street Journal,[14] this whole issue of licensing is up for reconsideration by the states in response to a lack of self policing by licensed members and the monopolistic practice of limiting competition through the licensing process. As counselors achieve professional recognition, regulation and identity, professional standards rise for all counselors.

C. Inspection, Registration, Certification, Licensing.

Whereas universal definitions of the levels of state regulation possibly may not be attained, one state statute[15] defines them as follows:

> Inspection means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession in order to ascertain if the practitioner involved is carrying out his profession or occupation in a fashion consistent with the public safety, health and welfare.
>
> Registration means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.
>
> Certification means the process whereby the Commission, Department or any regulatory board on behalf of the Commonwealth (State) issues a certificate to any person certifying that he has minimum skills properly to engage in his profession or occupation and that it knows of no character defect that would make him a bad practitioner of the same.

D. The Setting and Responsibilities

"The major threats to a counselee's civil liberties are most likely to arise when a counselor works both for his client and for an organization-any organization . . . too often counselors are really tools for administrators."[16] It is clear since Gault[17] and Tinker[18] decisions that neither the Fourteenth Amendment nor the Bill of Rights is for adults alone and that students' (or, for that matter, other clients') constitutional rights are not abandoned at the schoolhouse door.

The Ethical Standards, Section A:2, states "The member has a responsibility both to the individual who is served and to the institution within which the service is performed."

When a counselor is not in agreement with the institutional policies and is in a conflict situation, termination should be considered. A counselor considering employment in a public school system should realize the limitations before accepting. The counselor may, in actuality, be expected to serve as an arm of the administration. This situation may bring the counselor into conflict with Section B:1 of the Ethical Standards as previously cited. A counselor encountering such a conflict has an ethical obligation to inform his clients of limitations and not permit the client to, in effect, "testify against himself," by revealing information to a counselor under a duty to report to the administration.

In private practice, the possible conflicts are somewhat different. The private counselor is more likely to encounter problems with the community rather than an institution. Special considerations arise when the counselor asks fees for his services. Professional liability insurance should be procured.[19] This insurance does not solve legal or ethical problems; it merely provides coverage for counselors from suits arising from his/her practice.

E. Activity V

Read the case of "Ben Worried" (Appendix D). The principal parties, highlighted for your identification are:

1. the individual student,
2. other group members (couples),
3. the counselee's parents,
4. society at large (parents of other couples),
5. the employer (principal and board of education), and
6. the professional reputation of counselors in general.

a. With the case of "Ben Worried" in mind, indicate where your greater loyalty is in each pair by circling the principal party of the listed pairs to which the counselor in the incident has a greater obligation.

1. Profession or student
2. Employer or parent
3. Student or group
4. Group or parents
5. Employer or profession
6. Society or student
7. Parents or student
8. Profession or parents
9. Group or employer
10. Profession or society
11. Society or employer
12. Group or society
13. Profession or group
14. Society or parents
15. Student or employer

b. Now count and record the number of times you have circled each of the parties:

	Number		Number
Parents	______	Group	______
Students	______	Employer	______
Society	______	Profession	______

c. Arrange the various loyalties in the calls below with the most frequent on the left to the least frequent on the right.

Example: Parent, 4; Student, 5;
Society, 2; Group, 1;
Employer, 3; Profession, 0.

Student Parent Employer Society Group Profession

Most Frequent	Least Frequent

Your distribution ______________________________

____

Most Frequent	Least Frequent

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Feedback: The activity you have just completed represents a charting on a continuum of your loyalty to various groups. Recognize that the question is situational. A different incident representing a different danger to society would yield a different continuum.

F. Activity VI

Explanation of Legal Case Activities

You are expected to be able to discuss the cases given as "activities" and write a "brief" supporting either the plaintiff's or the defendant's position. As a New York court (Cherry vs. Board of Regents of State of New York 44 N.E. 2d 405, 1974) has held, in the absence of law, counselors are left to follow the dictates of their professional association's ethical standards. You will want to consider both the "standards" (APGA and ASCA) and the summary of law contained in the reading material.

There are no definitive answers to the cases given. You are therefore only expected to be able to pick out the relevant facts (or facts still needed), outline ethical problems arising, state legal considerations, and present a reasonable argument based thereon either for or against the defendant. The real value in the case approach is a discussion of the case and its implications by a group participating in the examination. In this way a working knowledge of both ethical standards and basic legal principles involved is attained.

The cases for your comment and discussion follow:

Miller vs. Johnson Case

Johnson is a high school counselor who mainly advises students in the vocational-educational area, and professes real expertise in this field. Johnson advised Miller, who was then a sophomore, that if he followed a certain course of study and maintained a "B" average he could enter Tufton University. The courses were spelled out by the counselor and put in writing. Miller followed this written plan and achieved better that a "B+" average. He applied to Tufton and was rejected on the basis that he did not have the course work needed for entry into such a prestigious university and that they would only consider him if he completed a fifth year in a preparatory academy. Tufton, when questioned, maintained that no standards had been changed for the past ten years. Miller sues his former counselor, Johnson, for the costs of a year at Andhaven Prep.

a. Relevant facts

b. Ethical principles involved

c. Legal considerations

d. Argument

Tuttle vs. VanOrd Case

VanOrd counsels in the town's only high school and is one of the few persons doing any personal counseling in the small community other than two local pastors. VanOrd has been working with Tuttle, now a junior, for over two years in the personal problem area. This has been encouraged by the parents and Tuttle's pastor, as "Mrs. VanOrd is the only mental health professional in town," a designation much to Mrs. VanOrd's liking. Tuttle has told his counselor for several months that he has been hearing strange voices telling him to "do the work of the Lord." He told VanOrd at a recent session that the voice was that of the Lord and that he had been told to kill his little sister for "her own salvation." VanOrd told him he was only imagining things and that this would all work out. Subsequently, Tuttle strangled his sister. The parents have now brought suit against VanOrd, claiming that she is a fraud who didn't know what she was doing and that their daughter's "wrongful" death is her fault.

a. Relevant facts

b. Ethical principles involved

c. Legal consideration

d. Argument

V. The Confidential Relationship and Privileged Communication

A. Confidential vs. Privileged

Confidential information and privileged communication are distinct entities having different legal implications.

> Confidentiality is really an ethical term referring to the decision made by a professional that he will not reveal to others what he has learned in private interaction with a client.
>
> Privileged communication refers to the legal privilege certain professions have not to disclose certain information in a court of law.[20]

The counselor has an ethical duty to maintain the confidential relationship by keeping in confidence the information resulting from that relationship.[21] Even where there is no legal privilege to prevent the counselor's release of such information in court, the duty still exists to exhaust all avenues short of contempt of court to maintain the confidence. This duty is well illustrated by the counselors' actions in the Claremont Colleges Draft Counseling Center Case.[22] Therein the counselors chose to face contempt of court proceedings and jail rather than divulge client confidences.

In protecting the confidential relationship, the school counselor is in the most difficult situation: "He is often surrounded by administrators and teachers who do not recognize or accept his professional status. In spite of the fact that administrators claim their professionalism, they are not sensitive to the concept of confidentiality as an aspect of their profession."[23] In point of fact, the confidential nature of the counseling session is a good example of the conflict between the professional counselor and the institution in which he/she is employed. When administrators view the counselor's role as an extension of their own, they may often demand information growing out of counseling sessions for use in making administrative decisions.

While it is clear that confidentiality as such is not protected by legal statutes, it is a misconception to think that without legal privilege there will be no confidentiality. There is no reason, if it is the intent of the people involved, why a communication cannot remain confidential outside the courtroom. Surely this confidentiality is the intent of clients as they share in trust their personal lives with the counselor. Not only is the counselor ethically bound to maintain this confidentiality, but the counselor is also open to suits regarding violations of confidence and charges before state P.G.A. Ethics Committees.

B. Confidential Relationship

The counselor is expected to maintain the confidential nature of the counseling relationship whether the material be written or spoken. Exceptions to this professional obligation occur when there is an indication of a clear and imminent danger to the counselee or others or when the counselor reserves the right to professional consultation. Counselees must also be informed of the conditions under which they receive counseling, including a warning by the counselor of any institutional obligation to report certain matters to the administration. This procedure should be especially adhered to within the school setting. It may be noted that the National Education Association Code of Ethics (Appendix C) requires educators to hold in confidence information that has been obtained in the course of professional service.[24]

What legally constitutes a confidential relationship? Clearly such a relationship is not limited to any particular association of people, but exists whenever one person acts as advisor or counselor to another, inspiring confidence that he/she will act in good faith for the other's interest.[25] When a continuous trust is held by one person for the skill or integrity of another, a confidential relationship can be said to exist.

Confidentiality has been further broadened to embrace not only trust relations established in an "official" capacity (technical fiduciary relations) but also informal relations which exist whenever one person trusts in and relies upon another.[26] For a confidential relationship to exist, the relation need not be legal; it may be moral, social, domestic, or merely personal.[27]

While there are no hard and fast rules about what a confidential relationship is, there are some generalizations which can be made from court rulings related to the topic. The counselor has an ethical duty to maintain the confidence unless such information must be released to protect the client or others from harm--i.e., information about dangerous drugs, planned suicide, or planned crimes. The counselor's duty in these instances would be to reveal in order to protect. In the case of revealing data about planned crimes, however, there is a problem in that the counselor becomes liable for violating the confidence if the crime is not carried out.

The best rule of thumb to use in deciding when to share a confidence is the need for the third party to know. If this third party needs to know the information in order for the necessary action to take place[28] or if the third party has a corresponding legal, social, or moral interest in the client, the counselor will not be violating the client's trust or right to privacy.

Release of confidential information obtained within the counseling relationship can amount to an invasion of privacy, giving the client the legal right to sue for damages.[29] [Libel and slander will be discussed in e.(c).] The major defense in such cases is the "qualified privilege," which weighs the social importance of the information more heavily than the client's right to privacy. Unless the counselor can be proved negligent or having intent to harm the client, this defense usually succeeds.[30]

Even though there is no common law recognition of privileged communication between a counselor and client there is, however, no right to reveal to any third person, outside the exceptions noted, any information obtained by the counselor. Every reasonable attempt must be made by the counselor to safeguard the confidential relationship before releasing any information. For example, where state statutes provide that public officers shall not be examined as witnesses to communications received in official confidence when the public interest would suffer by disclosure, an attempt to avoid testifying should be made. Of course, the judge must decide if the statutory conditions have been met. Normally, only the school superintendent has been considered an "officer."[31]

C. Privileged Communication

A recent law review article well states the case for the application of privileged communication to school counselors:

> In order for counselors to fully realize their potential for benefitting students with personal problems, there must be a free flow of communications between the student and counselor. Whenever the communications deal with areas involving drugs, veneral diseases or a multitude of similar problems, disclosure of the communications could have serious legal ramifications for the student...By en-encouraging free discussion the counselor can often help the student to better understand the nature, scope, and alternative resolutions to his problem...A testimonial privilege in this situation may substantially diminish these inhibitions by prohibiting disclosure of personal, privileged communications in court.[32]

Privileged communications may be legally defined as communications which, because of special relationship, are protected from revelation during the course of litigation. Originally, only the attorney-client relationship enjoyed this privilege[33] which now has been extended to include other relationships such as parent-child, priest-penitent, physician-patient and, in some instances, psychologist-client and counselor-client.[34] These privileges have been granted because of the value to society of "full and complete disclosures by the client, penitent, patient...If the client...knows that what he/she says will be kept secret, it is expected that he will speak more freely". The professional is then "able to render better assistance following full disclosure by the client, and as a result, it is argued, society benefits."[35]

In the absence of a statutory privilege, counselors can generally be subpoenaed and required to testify in court regarding communication with students. Solutions to this problem which may be considered include:

1. The possible applicability of existing general statutory privileges currently in force. An 1851 Iowa statute [36] exempts a practicing attorney, counselor, physician. . .minister, priest from disclosing any confidential information. However it is reasonable to conclude that in 1851 the Iowa legislature did not envision including today's counselors!

2. The honoring by a judge of a counselor's request not to be required to testify, especially when it is felt that the probative worth of the testimony would be minimal.

3. Inclusion within current testimonial privileges given psychologists. This is highly unlikely as often counselors do not meet the licensing standards and not all states recognize the psychologist's privilege.

4. Inadmissability of the counselor's testimony under the hearsay rule. However, one of numerous exceptions could make the testimony admissable.

5. Rigid adherence by the counselors to their ethical standards. This, of course, could lead to being held in contempt of court. The counselor should at least request that the judge not require him/her to testify as this would violate the confidential relationship and his professional ethics.[37]

The classic determination whether or not a particular relationship should be protected is based on Wigmore's criteria:

1. The communications must originate in confidence that they will not be disclosed.

2. This element of confidentiality must be essential to the full and satisfactory maintenance of the relation...

3. The relation must be one which in the opinion of the community ought to be sedulously fostered.

4. The injury that would occur to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.[38]

A further criterion should be the existence of a well defined group to whom the privilege will apply, spelling out exactly who qualifies; or there will be abuses resulting from unwarranted claims of privilege.[39]

D. Statutory Protection

Currently, 17 states have enacted counselor-student privilege statutes establishing privileged communications between counselors and students within specified settings and with some limitations. Maryland has enacted a privilege statute when the subject matter relates to "any form of drug abuse" and South Carolina and Washington, when the subject matter is "narcotics, dangerous drugs or alcohol."[40]

An inclusive statute extending the privilege to school counselors which may be a useful model is found in South Dakota.[41]

> No counselor certified in accordance with the certification regulations of the state board of education and regularly employed as a counselor for a private or public elementary or secondary school or school system in the state of South Dakota, may divulge to any other person, or be examined concerning any information or communication given to him in his official capacity by a student unless:
>
> 1. This privilege is waived in writing by the student; or
>
> 2. The information or communication was made to the counselor for the express purpose of being communicated or of being made public.

1974 amendments to this act provided for divulging otherwise privileged communication:

> If a counselor has reason to suspect, as a result of that information or communication that the student has been subjected to child abuse or that the student's physical or mental health may be in jeopardy.[42]

The 1974 amendment further extended the privilege to college counselors and students. Maine, Michigan and Montana have also extended the privilege to college counselors.[43]

Where the legislature has provided for privileged communication between counselors and students, it has presumably weighed the need for testimony in judicial proceedings against a relationship that is to be protected. Apparently there was a finding that the counselor-student relationship was superior warranting the privilege in the following states:[44]

1. Connecticut (Conn. Gen. State. Ann. Sec.10-154a, Supp. 1973)
2. Delaware (Del. Stats. Tit. 14 Ch 41 Sec. 4114, 1970)
3. Idaho (Ida. Code Sec. 9-203, Supp. 1973)
4. Indiana (Ind. Ann. Stat. Sec. 28-4537, 1970)
5. Maine (Me. Rev. Stat. Ann. Tit. 20, Sec. 801, Supp 1973-4)

6. Michigan (Mich. Stat. Ann. Sec. 27 A. 2165, Supp. 1973)
7. Montana (Mont. Rev. Codes Ann. Sec. 93-701-4, Supp. 1973)
8. Nevada (Nev. Laws Chap. 49, 1973)
9. North Carolina (N.C. Gen. Stat. Sec. 9353.4, Supp. 1973)
10. North Dakota (N.D. Cent. Code Sec. 31-01-06.1, Supp. 1973)
11. Oklahoma (School Law, Sec. 49)
12. Oregon (Ore. Rev. Stat. Sec. 44.040, 1971)
13. Pennsylvania (Pa. Stat. Ann. Tit. 24, Sec. 13-1319, Supp. 1973-4)
14. South Dakota (S.D. Compiles Laws Ann. Sec. 19-2-511, Supp. 1973)

Three model laws are given for consideration in the American School Counselor Newsletter dated March 25, 1974. Certain types of counselors, such as rehabilitation or marriage counselors, are accorded the privilege in several states including Colorado, Michigan, New Jersey, Oregon and South Carolina; and 35 states have a psychologist-client privilege, including 23 in licensing statutes.[45]

E. Activity VII

State vs. Clearant Case

Clearant was counseling Jack, a senior in high school, and as a result of that relationship learned that Jack was involved with several other boys in selling drugs around the high school and town. Jack talked about this to Clearant and said he desperately wanted to get off drugs and then he wouldn't have to sell them any longer. He named all those he was involved with in "pushing." One of those involved has gone to the police and told them that Jack is also involved and that the counselor knows this and further, that the counselor also knows who else is involved and still selling drugs. Clearant is subpoenaed to testify as to what he knows about this drug ring. He refuses to testify and is jailed for contempt of court. His attorney now argues that he did not have to divulge this information received in a confidential relationship.

a. Relevant facts

b. Ethical principles involved

c. Legal considerations

d. Argument

F. Activity VIII

Drug-Using Counselees*

You are a senior high school counselor. Early in the fall semester, you discover that several of your counselees are involved in the use of "hard" drugs. You secure medical advice on the effects of drugs and continue counseling with these students; but you do not inform the principal, the police, or the parents. A mother discovers that her son is on drugs. He advised her that the counselor has known for several weeks and "did not go to pieces over it." The mother demands that the counselor reveal the names of all drug users known to the counselor and enlists the support of several other anxious parents who make the same demands. They hint that legal action will be taken if he refuses to do so. The Counselor Should (Select only one).

1. Politely refuse, citing your ethical principles as a reason.

2. Explain to the parents that you have medical advice and you are actively working on referral and treatment but that names cannot be revealed at this time.
3. Explain your plans for treatment, and advise parents that you will encourage any student on drugs to tell his/her parents.
4. Provide the names without delay.
5. Other.

Explain the reasons for your choice.

*Adapted from Christiansen, *Ethics in Counseling* 1975.

VI. Records and Reporting

A. Constitutional Background

The major threats to a client's civil liberties are the conflicts of interest generated by a counselor's working for an organization as well as the client.[46] These conflicts of interest are further intensified where records and reporting are involved. Rights guaranteed by the First, Fourth, Fifth, and Fourteenth Amendments to the U. S. Constitution have unquestionably been extended to students:

> It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech of expression at the schoolhouse gate. 47
>
> Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the state must respect, just as they themselves must respect their obligations to the state.[48]
>
> Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.[49]

There is no question that institutional demands strain a counselor's legal and ethical duties, particularly in keeping confidences in both record keeping and reporting. Pressures arise that stress data collection and the dissemination of information to officials in the "best interests of the institution." The counselor's ethical questions are: "What do professional ethical standards require," and "how may a student's constitutional rights be violated"?

B. Counselor's Records

"'An habitual liar and a real sickie.' 'Ego impaired and maladaptive.' 'Unnaturally interested in girls.' 'This one is really a gem.'"[50] "Definite homosexual tendencies, always touching other boys." This homosexual behavior was observed in a third grade pupil! What can be the effect on a child when such statements remain in their records? These are not facts, only opinions and probably defamatory (libelous). J.C. Hogan points out that in the handling of students' records, constitutional rights are often ignored. At issue is the chronic invasion of privacy.[51] A good rule to follow might well be "No data, including that of conviction in a court of law, should be recorded in a student's file unless there is a demonstrable need for it which is reasonably related to the basic purposes and necessities of the university"[52] or institution.

More specifically, counselors should not include their personal views, standards, and values in records to which others might legally or illegally obtain access. Personal information should only be collected if absolutely necessary and with the knowledge and consent of the student and/or his/her family. Such information should then only be used for the original purpose necessitating its collection.[53] If counseling session notes are kept, these should be for the counselor's use alone and be destroyed after termination of the relationship.

> Records of the counseling relationship including interview notes, test data, correspondence, tape recordings and other documents are to be considered professional information for use in counseling, and they are not part of the public or official records of the institution or agency in which the counselor is employed. Revelation to others of counseling material should occur only upon the express consent of the counselee.[54]

Recent cases involving records show a tendency by the courts to protect the individual and his privacy unless there is an overriding public interest (general welfare/police power) to obtain facts not otherwise obtainable. An early case held that a person who attends a public school might be injured by the promiscuous circulation of his/her school records. "There is certainly a reasonable basis for the college authorities to restrict the circulation of this information."[55]

A California ruling that a student could recover damages if a school improperly released information about him is terribly important for counselors. ". . . under no circumstances is any personal information to be given out by a school or its officials for any other purpose, whether beneficial or detrimental." Further, "the superintendent . . . could not claim immunity insofar as he may have made or caused to be made defamatory statements concerning a student to members of the general public, if the statements were not merely reports of official action, but instead, purported to be a statement of facts within his personal knowledge."[56] We see therein an invasion of privacy with the release of records with probable grounds for libel based on the actual contents of the records.

The contents of records can also be challenged. In

1973 a federal court ordered references to suspensions removed from the records of city schools where the students had been suspended without benefit of due process of law.[57] Far reaching implications can be imagined if counselors' opinions ("definite homosexual tendencies") are in records. However in Jacobs vs. Board, a 1972 decision, while leaving the door open to students to get unfavorable statements out of their records, did not allow the present action as there had been no evidence submitted indicating the recordation of derogatory statements. This case had arisen out of disciplinary action involving the distribution of literature on the school grounds.[58]

However, if a social consideration intervenes, such as providing for the safety of students on a campus, relevant information for that purpose may be released, and there will not be cause for libel.[59] A university psychiatrist was protected where a diagnosis was released (for a purpose related to the "safety" of students) even though it was not later substantiated by a state hospital, because the record was not deliberately false. Here also the purpose for releasing the record weighed heavily. For an interesting discussion regarding records relating to the diagnosis or treatment of a mental or emotional disorder when the release of said records would have been to the patient's advantage, see the 1972 Maryland case of Avery vs. State reported in 292 A. 2d 728.[60]

It is argued that "even when the student requests his teacher (counselor?) to disclose information other than relating to his academic performance because he thinks it would be to his advantage, such disclosure should not be made since disclosure in individual cases would raise doubts about students who had made no such request. A satisfactory principle, therefore, would prohibit disclosure in all cases."[61] This argument is taking confidentiality to another extreme, but the A.C.L.U. argues this point in order to protect academic freedom and to foster an open exchange of ideas and critical inquiry.

The entire picture has drastically changed since the enactment of the "Family Educational Rights and Privacy Act of 1974," (Buckley Amendment) along with amendments of December, 1974.[62] As early as 1961 courts were beginning to hold that parents have a real interest in their children's records. The "obvious interest" of the parent was cited in Van Allen with the court stating, "We are, therefore, constrained to hold as a matter of law that the parent is entitled to inspect the records."[63] With the records now opened by statute the chance for libel suits becomes even greater (See 4.), unless records are purged.

The act gives to parents the right in "(a)(1). . . to inspect and review any and all official records, files and data directly related to their children. . . specifically including. . . identifying data, academic work completed, level of achievement, attendance data, scores on standardized intelligence, aptitude and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns." (The institution is given forty-five days to comply with requests.)

In (a)(2) parents are given "an opportunity for hearing to challenge the content of their child's school records, to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein."

It may be presumed that actions can be brought for damages in the event the contents are not "corrected," but the interpretation courts may give to "inappropriate data" may not be decided for some time. Note that counselors are specifically mentioned and that materials long forgotten may suddenly return to "haunt."

Another safeguard, in (b)(1), prohibits institutions from "permitting the release of personally identifiable records or files (or personal information contained therein) of students without the written consent of the parents to any individual, agency, or organization, other than to the following:

A. other school officials. . .who have legitimate educational interests;

B. officials of other schools. . .in which the student intends to enroll upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

C. authorized representative of specified government officials;

D. in connection with a student's application for, or receipt of, financial aid.

Institutions may not release records to any person other than those above, unless:

A. there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

B. such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency."

Section (b)(4)(A) requires "all persons, agencies, or organizations desiring access. . .to sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating specifically the legitimate educational or other interest that each person, agency, or organization has in seeking this information."

Limitations are also placed on the third party receiving the information in (b)(4)(D) in that they may "not permit any other party to have access to such information without the written consent of the parents of the student." Sub-section (d) provides that when a "student has attained 18 years of age, or is attending an institution of post secondary education, the permission or consent is required of and the rights accorded to the student." Finally, institutions are required to (e) "inform parents or students of the rights accorded them by this section."

Due largely to the outcry of the colleges as evidenced by one headline: "Colleges Fighting Open Files 'Evils'"[64] modifications were made in this act in December, 1974. The amendments provide:

1. A student may not be permitted to see medical records, but such records may be viewed by a physician of the student's choice.

2. The financial records of parents need not be disclosed to a student.

3. Confidential recommendations pertaining to admission to an educational institution, employment applications and the receipt of an honor need not be disclosed to a student if they were received before January 1, 1975, and a student may waive his right to see confidential recommendations; and the educational institution is prohibited from denying admission, financial aid or other benefits to a student who refused to waive his rights, and

4. The educational institution may release directory information including students' names, addresses, telephone numbers, major field of study and other similar information.[65] (Note: A notice of this information must be announced in appropriate media with parent having the opportunity to challenge.)

One state's "Freedom of Information Act" ("Sunshine Law") provided for much the same thing, to wit:

> S2.1-342. . .all official records shall be open to inspection and copying by any citizens of this State during the regular office hours of the custodian of such records.
>
> S2.1-342(b) The following records are excluded:
>
> (3). . .medical and mental records, scholastic records and personnel records, except that such access shall not be denied to the person who is the subject thereof.[66]

The Commonwealth's Attorney General since ruled that "a school board must allow a student access to his personal records, scholastic and otherwise."[67] The counselor must be aware of the Georgia "Sunshine Law" and any additions which might affect school records. (Note: Georgia HB 1285 of 1972.)

C. Reporting Student Matters

The counselor's professional Ethical Standards, Section B, gives two instances when student matters should be reported. First, the counselee must retain freedom of choice *except* when the "counselee does not have full autonomy for reasons of age, mental incompetency, criminal incarceration, or similar legal restrictions." In this event the counselor must then "work with others who exercise significant control and direction over the counselee. . ." Second, "When the counselee's condition indicates that there is clear and imminent danger to the counselee or others, the member is expected to take direct personal action or to inform responsible authorities."[68]

It seems clear that when the counselor exercises good faith, reasonable care, and acts without malice, even though he may be mistaken, he is protected from legal action as a consequence of reporting student matters, as seen in Morris vs. Rousos.[69] Another court held that the privacy rights of public school students must give way to an overriding governmental interest in investigating a reasonable suspicion of illegal drug use by students. The court, while permitting an infringement of constitutionally protected rights, added: ". . .rights . . .are no less precious because they are possessed by juveniles." In this case a teacher reported a high school girl for allegedly selling "white pills in the girls' room." Here the protection of others was of sufficient import to overcome the basic principle that "children are entitled to constitutional rights. . .the rights of privacy. . .must be preserved against the unmitigated zeal and 'insolence' of government officers at all levels."[70] In view of this strong language, it is clear that the societal reason for breaching the privacy right must be persuasive. In spite of the fact that the teacher's act was upheld by the court, a strong precedent for safeguarding future constitutional rights to privacy had been set.

The good faith standard clearly requires the counselor to notify parents of minor children of situations in which they have a proper interest. Examples might be cases where medical attention is required or instances when the child has been arrested or is about to be taken into custody.[71] In making such a decision the age and competency of the child should be considered and the counselor should consult with the child-client where possible.

In summary, it is also clear that if a counselor is aware that a crime is about to be committed or that the counselee is likely to harm him/herself or another, proper authorities should be called if reasonable efforts to change the projected course of events have failed. It is relatively clear that the likelihood of a counselor being held as an accessory to a crime is slight. If everything a client said in the area of harming another or self were reported the police would obviously be pushed beyond their capacities. If "reasonable care" is exercised the counselor should not be fearful of standing in violation of the law.

D. Activity IX

Stiles vs. Bridges Case

Bridges is a junior high counselor who saw Stiles, a seventh grader, take some pink pills and later saw Stiles acting "very high" and unusually "peppy." Bridges related this event to the teachers gathered in the lounge with the comment that "Stiles is a drug fiend. . . she's always popping something in her mouth." Due to her concern for Stiles, she next went to her office and entered on Stiles' "pupil record" that she had witnessed Stiles taking pills and feared Stiles was hooked on some dangerous drug. Later, one of the teachers who was a family friend confided to Stiles' mother that she should really try and get help for her daughter who was known by all the teachers to be "on pills." Mrs. Stiles, on investigation, found her daughter did occasionally take aspirin at school, but could find no proof that she used any other drugs. As some of the teachers were known to be talking in the community about the "poor Stiles family and their addicted daughter" Mrs. Stiles brought suit on behalf of herself and her daughter against Bridges for defamation.

a. Relevant facts

b. Ethical principles involved

c. Legal considerations

d. Argument

VII. Liability of Counselors

A. General Principles

A state agency or university may be shielded from liability, but the individual employees are not shielded from their own negligent acts.[72] Also, the Gault[73] and

Tinker[74] cases have extended the constitutional rights guaranteed all citizens to those attending school stating: "Students in school as well as out are persons under our Constitution". A 1972 Federal decision has affirmed and strengthened this previously enunciated principle in holding:

> Although university administrators once had an almost unrestricted power to deal with students under the theory of in loco parentis, it is now clear that constitutional restraints on authority apply on campuses of state supported educational institutions with fully as much sanction as on public streets and in public parks.[75]

The school is no longer an enclave outside the Constitution. The courts are open to cases involving the rights of students, and counselors must be in the forefront in protecting these rights. "We're on the verge of the last and greatest frontier in civil and legal rights--the rights of children."[76] As an example, the court in Tinker stated: "The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says."[77] Earlier cases were reaffirmed by a 1972 decision which stated: "A student does not lose the protection of the Constitution when he enters the schoolyard."

In order to protect the constitutional rights of students, the courts today are "reluctantly entering the schoolyard," an area formerly reserved to the school authorities. This is illustrated by the number of Federal court cases involving education rising from 15 in the ten year period 1897-1906 to 1,273 in the five year period 1967-1971. A Federal Court of Appeals judge stated:

> It is regrettable, of course, that in deciding this case this court must act in an area so alien to its expertise. . .Under our system the judiciary must bear a hand and accept its responsibility to assist in the solution where Constitutional rights hang in the balance.[79]

As will be seen, greater care will have to be exercised by counselors in affirmatively protecting Constitutional rights, guarding against libelous or slanderous publication, safeguarding privacy, and exercising good faith in dealing with clients.

B. Libel and Slander

As a matter of clarification, "the only distinction between 'slander' and 'libel' is the form of defamation--oral or written."[80] Common law grounds for libel of interest to counselors were summarized in a 1972 decision:

Defamatory words which are actionable per se include:

1. Those which impute to a person the commission of some criminal offense involving moral turpitude,
2. Those which impute that a person is infected with some contagious disease which, if true, would exclude the party from society,

3. Those which impute to a person unfitness to perform the duties of an office or employment for profit.

4. Those which prejudice such person in his or her profession or trade, or

5. All other defamatory words which, though not in themselves, actionable, occasion a person special damages.[81]

Libel has been defined as a "method of defamation expressed by print, writing, pictures or signs." In its most general sense it has been held to be any publication that is injurious to the reputation of another; "almost any language which upon its face has a natural tendency to injure a man's reputation, either generally or with respect to his occupation."[82]

In further clarifying grounds for libel, courts have held:

1. Everything printed or written which reflects on the character of another and is published without lawful justification or excuse is a "libel" whatever the intention may have been.[83]

2. The test of whether a writing is a "libel" is whether the writing discredits the plaintiff in the minds of any considerable and respectable class of a community.[84]

3. In some cases it may be libelous if the plaintiff has been written up as an object of pity, as this may tend to make him be shunned or avoided though it imputes no moral turpitude to him,[85] and

4. Letters can constitute libel if the content is defamatory.[86]

Defamation is a statutory offense in some states, and these laws should be checked. A typical defamation statute provides for ". . . action for insulting words when construed as insults and tend to violence and breach of the peace." (This definition of defamation has been interpreted by the courts as the same as an action for libel or slander.) The statute further provides that publication is not necessary. The words only have to be conveyed to the person libelled, such as mailing of a defamatory letter to a third party. Legal malice is presumed from the utterance of the insulting words. In actions under this provision damages are presumed from proof of the utterance of insulting words.[87] The statute in question further provides that justification and mitigation of damages can occur only through proving that the words spoken or written were true. An apology goes only to mitigate damages.[88]

A 1972 decision extended coverage under the above statute as follows: ". . . for words to be considered as defamatory and actionable it is not necessary that the defamation charged be in direct terms. It may be made by inference, implication, innuendo, or insinuation."[89]

Of special interest to counselors is a provision for immunity for school personnel investigating or reporting alcohol or drug use.

> Any . . . guidance counselor . . . of any elementary or secondary school or institution of higher learning who, in good faith with probable cause and without malice, acts to report, investigate . . . activities of any student or students or any other person or persons as they relate to alcohol or drug use or abuse in or related to the school or institution or in connection with any school or institutional activity shall be immune from all civil liability that might otherwise be incurred or imposed as the result of the making of such a report, investigation or disclosure.[90]

In addition to explicit statutory immunity, as cited above, defenses available to counselors when confronted with charges of libel include acting within the legitimate scope of the job and reporting official action only, as discussed in the Elder case.[91] This defense is further elaborated upon in a Federal case: "Where the author of a libel writes under compulsion of a legal or moral duty, or for the protection of his own rights or interests, that which he writes is a 'privileged communication' unless the writer was actuated by malice."[92]

The judge rules that in the law of slander a privileged communication is "one made by a person who has an interest in the subject matter to one who also has an interest in it or stands in such a relation that it is a reasonable duty or a proper one for the person to make the statement."[93] Unless the communication falls within this type of "qualified privilege" the counselor must bear legal consequences for libelous words.

C. Professional Responsibility, Good Faith, and Malpractice

Professional responsibility is clearly outlined in the "Ethical Standards" for counselors (previously discussed). In the law, early cases examined good faith in interpersonal dealings; and as early as 1895, an Illinois court said it consisted of an "honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of the law."[94] The applicability of this definition is immediately apparent to counselors, who often stand in a position of superiority to, or are relied upon by the counselee, and are thereby in an advantageous position.

Professional responsibility goes hand in glove with a modern restatement holding: "Good faith in the law means being faithful to one's duties or obligations consistent with the generally accepted sense of professional responsibility of one's profession."[95] The counselor lives under those responsibilities defined in "Ethical Standards." Good faith in relation to a doctor was discussed in a 1972 case with the court holding that a "presumption exists that whenever a physician attends a patient the treatment he renders is given in good faith . . . good faith means good intent and the honest exercise of the physician's best judgment as to the needs of his patient; mere errors of judgment are not evidence of bad faith."[96]

The counselor can easily see him/herself in the shoes of this physician on trial--being held to a similar standard of good faith. In further clarification, good faith has also been described as "that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation."[97] When good faith has been violated by the counselor, he/she is open to suit.

D. Malpractice

Malpractice may be considered the opposite of acting in good faith and is usually defined as a:

> . . . professional person's failure to render proper services through reprehensible ignorance or negligence, resulting in injury or loss to the person receiving those professional services . . . Acceptable professional practice at one point in time can be flagrant malpractice at another.[98]

As counselors' professional standards are raised and training expanded, a higher level of care may now reasonably be expected by the public.

By way of illustration, an area in which a counselor's responsibility has greatly increased involves the right to privacy. The unprofessional, sometimes wanton, dissemination of information about student clients is no longer acceptable, and in fact, "where the right to privacy is held to exist, its invasion may be remedied by a civil action for damages."[99] The implications of this statement for counselors are tremendous. Good faith imposes on the counselor the duty to be judicious about sharing any information received from a student with any other person without the student's (or his/her parent', depending upon the student's age and condition) knowledge and permission.[100] In addition to "consent", disclosure of uncomplimentary information about a student-client should only be made in the professional interest or advancement of the student or to protect the student or others, or it will be without good faith.

The Forsythe case clarified this point in holding that rumor or gossip which tends to put the student in a bad light may not be repeated unless there is a compelling reason or duty to report it.[101] A 1974 Federal case advanced this principle, holding that the determination by educational authorities of a student's academic or emotional fitness may be actionable if the adverse determination complained of is motivated by bad faith.[102]

Since the first edition of the Law of Guidance and Counseling in 1964, the issue of due process of law has come to the fore.[103] It appears to have taken an about-face with counselors (as an integral part of professional responsibility) now having a positive duty to protect the rights of students. Ladel states:

> Protecting civil liberties is more than a matter of correcting abuses or injustices which have arisen; it also requires preventing those which might arise. No matter how professional the counseling program and the staff of an organization, its clients' civil liberties will be safe only if there are systematic safeguards against their being violated.[104]

The Code of Student Rights should be referred to for further guidance.[105]

E. Activity X

Mannor vs. Handler Case

Handler is a high school counselor who lets his colleagues and students know of his ability as a group counselor. In one group certain members got deeply "involved" with the counselor. Several members commented on this outside the group. At the last meeting of the group for the year they met in the country; and after the "formal" group session ended Handler had sexual relations with Mannon, who is now a senior. She became pregnant and is now suing the counselor. Her attorney claims that Handler tood advantage of the relationship and violated the principle of "good faith." It is further claimed that Miss Mannon is suffering emotionally and financially as a result of this unwanted pregnancy. She claims to have relied on Handler's prescription that the sexual intercourse was just what she needed, what the "doctor" would prescribe.

a. Relevant facts

b. Ethical principles involved

c. Legal considerations

d. Argument

VIII. Ethical and Legal Conflicts, Behavior and Values.

A. Possible Role Conflicts

In previous sections it was noted that the "helping" role of the counselor often creates possibilities of conflict with institutional rules and societal requirements. This section deals more precisely with these conflicts. The following key points should be considered:

1. The counselor is an agent of society. All societies make some demands upon its members and expect adherence to some specific rules of conduct.
2. The counselor is also a public employee who is expected to abide by the standards of the community and the rules of the employing institution.

3. The needs and/or demands of the institution and the needs and wishes of individuals often conflict. Counselors, who are special helpers for student and who often serve as advocates for students, are sometimes caught in the middle of these conflicting needs/demands.

4. The perceptions which others have for the counselor may conflict with the counselor's perceptions of role. For example, an administrator may expect the counselor to support and enforce school rules; and the counselor may feel that such activities limit his effectiveness as a counselor.

5. Some conflicts are primarily ethical, some are legal; and others have both ethical and legal dimensions. Some of the exercises are designed to highlight these points.

B. Unethical and Incompetent Behavior

In our society, professional people are given considerable freedom and flexibility in the practice of their profession. The counselor is free to use his/her own judgment and make individual decisions as long as he/she does not violate the law or displease those in positions of authority. The right to act according to one's own best judgment is necessary to the autonomy of the profession and the integrity of the individual counselor. This right also implies the duty to behave according to the rules of one's profession and the standards of society.

Society enacts laws to protect its members, and professional associations develop ethical codes to protect the profession as well as those served by the profession. Most counselors are ethical and sufficiently enlightened to obey the law and to use ethical codes as guidelines to professional conduct. Unfortunately, however, some counselors, either because of ignorance, poor judgment, lack of concern, or self-interest, behave unethically and perhaps illegally. They are guided by no professional standard and may even be unaware of the potential damage of their acts both to others and to themselves. Some of these individuals are protected by other counselors who have a misguided sense of loyalty to the profession or who simply do not wish to get involved in reporting a case of unethical behavior.

The APGA Code of Ethics requires that cases of unethical behavior be reported to proper authorities after first confronting the individual involved. Some professional associations, such as APA, have more precise ethical codes that lead to expulsion of members convicted of unethical behavior. Following conviction, all members of APA are notified that the member has been expelled.

We have defined an unethical counselor as one who lacks sufficient integrity, moral commitment, or judgment necessary to adhere to standards of right and wrong behavior in his professional activities. Incompetent behavior, though an intricate part of unethical practice, is somewhat different. Incompetence may be defined as lack of skill, ability, or training necessary to function effectively. Failure to recognize one's limitations and fallabilities is also an element in incompetence. Some unethical and incompetent acts gleaned from the literature as well as our experiences include the following:

1. Violating confidences.
2. Failing to report unethical practices; tolerating incompetence in others.
3. Claiming expertise not possessed; using strategies one is not trained to use.
4. Deceit. Misleading counselees, other professionals, and the general public.
5. Promoting dependency in counselees.
6. Misuse of one's position; taking advantage of counselees.
7. Denying responsibility for acts and their consequences.
8. Forming "beyond the office" relationships with counselees.

C. Value Problems in Counseling

It is not surprising that few counselors, or other helping professionals, give much attention to the value systems to which they and others subscribe. The task of value analysis and understanding is exceedingly difficult. Yet, the effective counselor constantly confronts values that come from many sources and which operate at many levels. Our values and those of our counselees are reflected in the way we spend our time, in our beliefs, in our interests, and in our views about others and ourselves.

Since the major source of values is found in experiences, we can expect that different experiences will give rise to different values. Values also change as a result of learning, growing, and experiencing. Our value systems cannot be separated from our professional ethical and legal behavior.

Because our values strongly influence the ways in which we live our lives, the counselor must develop an awareness not only of his own values but of the values of others as well. All people have beliefs about how things ought to be or how they would like them to be. We are _for_ some things and _against_ others; we hold some things to be _true_ and others to be false; some things _good_ and others _bad_. The disposition to favor some things and to disfavor others leads to choices and decisions, or to put it more directly, significantly influences the behavior of the counselor as well as that of the counselee.

It seems clear that many problems with which counselors deal involve the values of the counselee, or those of his/her family or peer group. Consider, for example, the following counselee remarks along with the values they represent.

> "I know it is wrong to have sex before marriage."
> (My family or my church believe it is wrong.)
>
> "I must graduate from college."
> (I wish to be successful.)
>
> "Yeah, I cheated on the exam; but that's no big deal."
> (I value material possessions and/or wealth.)

It is not the business of guidance and counseling to answer all the "value" questions posed by their counselees nor is it appropriate for counselors to provide absolution for all sins committed or contemplated. Further, we cannot accept the notion that neurotic behavior is blameless. On the contrary, counseling should help the individual to understand that he/she makes choices and decisions, and that he/she must assume the responsibility for these decisions.

D. Activity XI

You are one of three counselors in a school. Several teachers have talked with you about behavior of one of your counselor-colleagues which gives you reason to believe that professional ethics are being violated. Listed below are alternative actions which you might consider to rectify the situation. Rank the activities in the order you would proceed until satisfactory resolution was reached.

______Contact the chairperson of the APGA Ethics Commission.

______Consult your principal for advice.

______Contact your State Branch (APGA) Ethics Committee Chairperson.

______Go to the counselor and attempt to rectify the situation.

______Contact the prosecuting attorney.

Reread Section A - Paragraph 3 of the Ethical Standards and reconsider your ranking.

E. Activity XII

If you are working in a group take time to discuss the topics and questions listed below. If you are working alone, consider these topics:

1. The role of professional associations in monitoring the behavior of counselors.
2. Quality of professional training.
3. How competency as a counselor is measured.
4. How does a counselor deal with ethical principles which conflict with institutional policy or administrative practice?
5. Situations in which you were involved or have personal knowledge of where there were ethical conflicts.

Counselors sometimes wish to "explain away" their actions with such statements as "Well, it's the rule," "Counselors have no choice," and "We have always done it that way." You are to consider various methods for dealing with ethical problems. Emphasize the right of a counselor to question rules. Point out that it is possible to make individual decisions which do not violate rules or laws and which also allow the counselor to behave in an ethical manner.

F. Activity XIII

There was a time when counselors were not supposed to deal with values, and any suggestion that values should be imposed upon counselees was considered coercive. Yet, both counselors and counselees have values; and there are prevailing values in communities and families. These values may not be in harmony; and, in fact, the client's problem may be directly related to conflicts between his values and those of his family or community. One of the questions for the counselor, then, is the degree of disequilibrium resulting from this divergence of values. But even more important is the question of how a counselor assists counselees to experience a value system without an authoritarian imposition of his own. We do not believe that counselors should have only "mild" values nor that a counselor's expression of his own values is wrong. On the contrary it may often be necessary to take a firm position in trying to help some counselees. Ethically, a counselor cannot make decisions for his counselees, but he/she can help the counselee understand the necessity for taking responsibility for his/her own life. We do not believe that a counselor must remain neutral when counseling with a person whose values are leading to problems for the counselee or for others.

Several questions of an ethical nature must be faced by all counselors. How do we reconcile our proclaimed faith in the dignity and worth of the individual with the widespread practice of supporting standards of society and its institutions? Do counselors simply accept the values of society and help people "adjust" or "conform"? Is there a measure that can be used to determine the adequacy of value systems in various societies and is there a method to measure positive and negative values? How do we deal with our own values when these conflict with those we seek to help?

If working individually, write out your answers to the questions posed in the preceding paragraph. If working in groups, discuss each of the questions.

IX. The Future

A. Possible Litigation

As counselors move more into the "private" sectors, professional standards will be increasingly raised; and greater public respect should result for the profession. The effect may well be an ever increasing responsibility and higher expectations from educational administrative and student-clients as well as from the public. Greater care in dealing with all counselees will be demanded.

Classifying counselors as teachers rather than psychologists (Bogust Case)[106] will be open to challenge as counselors increasingly hold themselves out as specialists in dealing with personal problems.

A case pending in one state (as yet unreported) may have a great impact. A community college counselor is being sued by a student who claims he relied on the advice of the counselor in taking courses to the effect that if he took a certain program he would be admitted to a university program. Allegedly several courses were not those actually required and others were. Now the counselee is seeking damages based on the allegation that he must take additional courses, which will cost him money and time due to poor advising.[107] As counselors go well beyond this type of educational advising case, even greater responsibilities are assumed.

In 1971 Begmer predicted: "Within this decade we are likely to see a charge of malpractice made against a counselor . . . it will be charged that the counselor behaved in a careless, negligent, or stupid manner; that he could have and should have known better".[108] This prediction has come to pass and serves well as a warning for the future. Counselors must continue upgrading their training through additional course work, supervised practicums and participation in professional organizations and workshops.[109]

B. Suggested Guidelines

1. The counselor of the future will have to be better equipped and more thoroughly trained in the personal counseling and group procedures areas. Higher professional standards will have to be met to avoid possible litigation.

2. Counselors now practicing must, as doctors, lawyers or other professionals, keep up with the field through workshops, in-service training and continuing education.
3. Counselors must adhere more rigidly to the "Ethical Standards" especially in areas such as privacy, record keeping, testing and personal counseling. Workshops dealing with these standards should be offered.
4. Counselors in the future must become more aware of and sensitive to the legal implications of their actions.
5. Emphasis must continue to be given to career development and career education.
6. Counselors must move more into consulting roles in helping parents, teachers and administrators deal more effectively with today's children.
7. Counselors must become more politically sensitive and be willing to lobby for those essentials which only legislatures can bestow. State and national officers must take real leadership roles in this area.

Today's counselor in the school has come a long way from the vocational guidance person of just a few years past. With greater recognition and more prerogatives comes greater responsibility and the need to adhere to more stringent ethical standards. Self policing and policing by professional associations are demanded if the profession is to continue its present thrust. More attention must be given to the law of counseling and the general principles of the law which apply to professionals. Both the medical and legal professions have learned that they are not immune from malpractice suits. Counselors are just now beginning to experience this as it is realized that the counselor, too, is dealing with human lives!

C. Activity XIV

Devise an outline for a legal-ethical course of the future for counselors. Include what you feel will be necessary to protect the rights and interests of the counselee, the counselor and the school.

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101 Forsythe vs. Durham, 270 N.Y. 14, 200 N.E. 674 (1936).

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APPENDIX A

AMERICAN PERSONNEL AND GUIDANCE ASSOCIATION ETHICAL STANDARDS

AMERICAN PERSONNEL AND GUIDANCE ASSOCIATION

ETHICAL STANDARDS

Preamble

The American Personnel and Guidance Association is an educational, scientific, and professional organization whose members are dedicated to the enhancement of the worth, dignity, potential, and uniqueness of each individual and thus to the service of society.

The Association recognizes that the role definitions and work settings of its members include a wide variety of academic disciplines, levels of academic preparation and agency services. This diversity reflects the breadth of the Association's interest and influence. It also poses challenging complexities in efforts to set standards for the performance of members, desired requisite preparation or practice, and supporting social, legal, and ethical controls.

The specification of ethical standards enables the Association to clarify to present and future members and to those served by members the nature of ethical responsibilities held in common by its members.

The existence of such standards serves to stimulate greater concern by members for their own professional functioning and for the conduct of fellow professionals such as counselors, guidance and student personnel workers, and others in the helping professions. As the ethical code of the Association, this document establishes principles which define the ethical behavior of Association members.

Section A: General

1. The member influences the development of the profession by continuous efforts to improve professional practices, teaching, services, and research. Professional growth is continuous throughout the member's career and is exemplified by the development of a philosophy that explains why and how a member functions in the helping relationship. Members are expected to gather data on their effectiveness and to be guided by the findings.

2. The member has a responsibility both to the individual who is served and to the institution within which the service is performed. The acceptance of employment in an institution implies that the member is in substantial agreement with the general policies and principles of the institution. Therefore the professional activities of the member are also in accord with the objectives of the institution. If, despite concerted efforts, the member cannot reach agreement with the employer as to acceptable standards of conduct that allow for changes in institutional policy conducive to the positive growth and development of counselees, then terminating the affiliation should be seriously considered.

3. Ethical behavior among professional associates, members and nonmembers, is expected at all times. When information is possessed which raises serious doubt as to the ethical behavior of professional colleagues, whether Association members or not, the member is obligated to take action to attempt to rectify such a condition. Such action shall utilize the institution's channels first and then utilize procedures established by the state, division, or Association.

The member can take action in a variety of ways: conferring with the individual in question, gathering further information as to the allegation, conferring with local or national ethics committees, and so forth.

4. The member must not seek self-enhancement through expressing evaluations or comparisons that are damaging to others.

5. The member neither claims nor implies professional qualifications exceeding those possessed and is responsible for correcting any misrepresentations of these qualifications by others.

6. In establishing fees for professional services, members should take into consideration the fees charged by other professions delivering comparable services, as well as the ability of the counselee to pay. Members are willing to provide some services for which they receive little or no financial remuneration, or remuneration in food, lodging, and materials. When fees include charges for items other than professional services, that portion of the total which is for the professional service should be clearly indicated.

7. When members provide information to the public or to subordinates, peers, or supervisors, they have a clear responsibility to ensure that the content is accurate, unbiased, and consists of objective, factual data.

8. The member shall make a careful distinction between the offering of counseling services as opposed to public information services. Counseling may be offered only in the context of a reciprocal or face-to-face relationship. Information services may be offered through the media.

9. With regard to professional employment, members are expected to accept only positions that they are prepared to assume and then to comply with established practices of the particular type of employmemt setting in which they are employed in order to ensure the continuity of services.

Section B: Counselor-Counselee Relationship

This section refers to practices involving individual and/or group counseling relationships, and it is not intended to be applicable to practices involving administrative relationships.

To the extent that the counselee's choice of action is not imminently self-or other-destructive, the counselee must retain freedom of choice. When the counselee does not have full autonomy for reasons of age, mental incompetency, criminal incarceration, or similar legal restrictions, the member may have to work with others who exercise significant control and direction over the counselee. Under these circumstances the member must apprise counselees of restrictions that may limit their freedom of choice.

1. The member's primary obligation is to respect the integrity and promote the welfare of the counselee(s), whether the counselee(s) is (are) assisted individually or in a group relationship. In a group setting, the member-leader is also responsible for protecting individuals from physical and/or psychological trauma resulting from interaction within the group.

2. The counseling relationship and information resulting therefrom must be kept confidential, consistent with the obligations of the member as a professional person. In a group counseling setting the member is expected

to set a norm of confidentiality regarding all group participants' disclosures.

3. If an individual is already in a counseling/therapy relationship with another professional person, the member does not begin a counseling relationship without first contacting and receiving the approval of that other professional. If the member discovers that the counselee is in another counseling/therapy relationship after the counseling relationship begins, the member is obligated to gain the consent of the other professional or terminate the relationship, unless the counselee elects to terminate the other relationship.

4. When the counselee's condition indicates that there is clear and imminent danger to the counselee or others, the member is expected to take direct personal action or to inform responsible authorities. Consultation with other professionals should be utilized where possible. Direct interventions, especially the assumption of responsibility for the counselee, should be taken only after careful deliberation. The counselee should be involved in the resumption of responsibility for his actions as quickly as possible.

5. Records of the counseling relationship including interview notes, test data, correspondence, tape recordings, and other documents are to be considered professional information for use in counseling, and they are not part of the public or official records of the institution or agency in which the counselor is employed. Revelation to others of counseling material should occur only upon the express consent of the counselee.

6. Use of data derived from a counseling relationship for purposes of counselor training or research shall be confined to content that can be sufficiently disguised to ensure full protection of the identity of the counselee involved.

7. Counselees shall be informed of the conditions under which they may receive counseling assistance at or before the time when the counseling relationship is entered. This is particularly so when conditions exist of which the counselee would be unaware. In individual and group situations, particularly those oriented to self-understanding or growth, the member-leader is obligated to make clear the purposes, goals, techniques, rules of procedure, and limitations that may affect the continuance of the relationship.

8. The member has the responsibility to screen prospective group participants, especially when the emphasis is on self-understanding and growth through self-disclosure. The member should maintain an awareness of the group participants' compatibility throughout the life of the group.

9. The member reserves the right to consult with any other professionally competent person about a counselee. In choosing a consultant, the member avoids placing the consultant in a conflict of interest situation that would preclude the consultant's being a proper party to the members' efforts to help the counselee.

10. If the member if unable to be of professional assistance to the counselee, the member avoids initiating the counseling relationship or the member terminates it. In either event, the member is obligated to refer the counselee to an appropriate specialist. (It is incumbent upon the member to be knowledgable about referral resources so that a satisfactory referral can be initiated.) In the event the counselee declines the suggested referral, the member is not obligated to continue the relationship.

11. When the member learns from counseling relationships of conditions that are likely to harm others, the member should report the condition to the responsible authority. This should be done in such a manner as to conceal the identity of the counselee.

12. When the member has other relationships, particularly of an administrative, supervisory, and/or evaluative nature, with an individual seeking counseling services, the member should not serve as the counselor but should refer the individual to another professional. Only in instances where such an alternative is unavailable and where the individual's condition definitely warrants counseling intervention would the member enter into and/or maintain a counseling relationship.

13. All experimental methods of treatment must be clearly indicated to prospective recipients, and safety precautions are to be adhered to by the member.

14. When the member is engaged in short-term group treatment/training programs, e.g., marathons and other encounter-type or growth groups, the member ensures that there is professional assistance available during and following the group experience.

15. Should the member be engaged in a work setting that calls for any variation from the above statements, the member is obligated to consult with other professionals whenever possible to consider justifiable alternatives. The variations that may be necessary should be clearly communicated to other professionals and prospective counselees.

Section C: Measurement and Evaluation

The primary purpose of educational and psychological testing is to provide descriptive measures that are objective and interpretable in either comparative or absolute terms. The member must recognize the need to interpret the statements that follow as applying to the whole range of appraisal techniques including test and nontest data. Test results constitute only one of a variety of pertinent sources of information for personnel, guidance, and counseling decisions.

1. It is the member's responsibility to provide adequate orientation or information to the examinee(s) prior to and following the test administration so that the results of testing may be placed in proper perspective with other relevant factors. In so doing, the member must recognize the effects of socioeconomic, ethnic, and cultural factors on test scores. It is the member's professional responsibility to use additional unvalidated information cautiously in modifying interpretation of the test results.

2. In selecting tests for use in a given situation or with a particular counselee the member must consider carefully the specific validity, reliability, and appropriateness of the test(s). "General" validity, reliability, and the like may be questioned legally as well as ethically when tests are used for vocational and educational selection, placement, or counseling.

3. When making any statements to the public about tests and testing, the member is expected to give accurate information and to avoid false claims or misconceptions. Special efforts are often required to avoid unwarranted connotations of such terms as IQ and grade equivalent scores.

4. Different tests demand different levels of competence for administration, scoring, and interpretation. Members have a responsibility to recognize the limits of

their competence and to perform only those functions for which they are prepared.

5. Tests should be administered under the same conditions that were established in their standardization. When tests are not administered under standard conditions or when unusual behavior or irregularities occur during the testing session, those conditions should be noted and results designated as invalid or of questionable validity. Unsupervised or inadequately supervised test-taking, such as the use of tests through the mails, is considered unethical. On the other hand, the use of instruments that are so designed or standardized to be self-administered and self-scored, such as interest inventories, is to be encouraged.

6. The meaningfulness of test results used in personnel, guidance, and counseling functions generally depends on the examinee's unfamiliarity with the specific items on the test. Any prior coaching or dissemination of the test materials can invalidate test results. Therefore, tests security is one of the professional obligations of the member. Conditions that produce most favorable test results should be made known to the examinee.

7. The purpose of testing and the explicit use of the results should be made known to the examinee prior to testing. The counselor has a responsibility to ensure that instrument limitations are not exceeded and that periodic review and/or retesting are made to prevent counselee sterotyping.

8. The examinee's welfare and explicit prior understanding should be the criteria for determining the recipients of the test results. The member is obligated to see that adequate interpretation accompanies any release of individual or group test data. The interpretation of test data should be related to the examinee's particular concerns.

9. The member is expected to be cautious when interpreting the results of research instruments possessing insufficient technical data. The specific purposes for the use of such instruments must be stated explicitly to examinees.

10. The member must proceed with extreme caution when attempting to evaluate and interpret the performance

of minority group members or other persons who are not represented in the norm group on which the instrument was standardized.

11. The member is obligated to guard against the appropriation, reproduction, or modifications of published tests or parts thereof without the express permission and adequate recognition of the original author or publisher.

12. Regarding the preparation, publication, and distribution of tests, reference should be made to:

a. Standards for Educational and Psychological Tests and Manuals, revised edition, 1973, published by the American Psychological Association on behalf of itself, the American Educational Research Association, and the National Council on Measurement in Education.

b. "The Responsible Use of Tests: A Position Paper of AMEG, APGA, and NCME," published in Measurement and Evaluation in Guidance Vol. 5, No. 2, July 1972, pp. 385-388.

Section D: Research and Publication

1. Current American Psychological Association guidelines on research with human subjects shall be adhered to (Ethical Principles in the Conduct of Research with Human Participants. Washington, D.C.: American Psychological Association, Inc. 1973)

2. In planning any research activity dealing with human subjects, the member is expected to be aware of and responsive to all pertinent ethical principles and to ensure that the research problem, design, and execution are in full compliance with them.

3. Responsibility for ethical research practice lies with the principal researcher, while others involved in the research activities share ethical obligation and full responsibility for their own actions.

4. In research with human subjects, researchers are responsible for their subjects' welfare throughout the experiment, and they must take all reasonable precautions to avoid causing injurious psychological, physical, or social effects on their subjects.

5. It is expected that all research subjects be informed of the purpose of the study when withholding information or providing misinformation to them is essential to the investigation. In such research, the member is responsible for corrective action as soon as possible following the research.

6. Participation in research is expected to be voluntary. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects.

7. When reporting research results, explicit mention must be made of all variables and conditions known to the investigator that might affect the outcome of the investigation or the interpretation of the data.

8. The member is responsible for conducting and reporting investigations in a manner that minimizes the possibility that results will be misleading.

9. The member has an obligation to make available sufficient original research data to qualified others who may wish to replicate the study.

10. When supplying data, aiding in the research of another person, reporting research results, or in making original data available, due care must be taken to disguise the identity of the subjects in the absence of specific authorization from such subjects to do otherwise.

11. When conducting and reporting research, the member is expected to be familiar with and to give recognition to previous work on the topic, as well as to observe all copyright laws and follow the principle of giving full credit to all to whom credit is due.

12. The member has the obligation to give due credit through joint authorship, acknowledgement, footnote statements, or other appropriate means to those who have contributed significantly to the research, in accordance with such contributions.

13. The member is expected to communicate to other members the results of any research judged to be of professional or scientific value. Results reflecting unfavorably on institutions, programs, services, or vested interests should not be withheld for such reasons.

14. If members agree to cooperate with another individual in research and/or publication, they incur an obligation to cooperate as promised in terms of punctuality of performance and with full regard to the completeness and accuracy of the information provided.

Section E: Consulting and Private Practice

Consulting refers to a voluntary relationship between a professional helper and help-needing social unit (industry, business, school, college, etc.) in which the consultant is attempting to give help to the client in the solution of some current or potential problem. When "client" is used in this section it refers to an individual, group, or organization served by the consultant. (This definition of 'consulting' is adapted from "Dimensions of the Consultant's Job" by Ronald Lippitt, Journal of Social Issues, Vol. 15, No. 2, 1959.)

1. Members who act as consultants must have a high degree of self-awareness of their own values and needs in entering helping relationships that involve change in social units.

2. There should be understanding and agreement between consultant and client as to the task, the directions or goals, and the function of the consultant.

3. Members are expected to accept only those consulting roles for which they possess or have access to the necessary skills and resources for giving the kind of help that is needed.

4. The consulting relationship is defined as being one in which the client's adaptability and growth toward self-direction are encouraged and cultivated. For this reason, the consultant is obligated to maintain consistently the role of a consultant and to avoid becoming a decision maker for the client.

5. In announcing one's availability for professional services as a consultant, the member follows professional rather than commercial standards in describing services with accuracy, dignity, and caution.

6. For private practice in testing, counseling, or consulting, all ethical principles defined in this document are pertinent. In addition, any individual, agency, or institution offering educational, personal, or

vocational counseling should meet the standards of the International Association of Counseling Services, Inc.

7. The member is expected to refuse a private fee or other remuneration for consultation with persons who are entitled to these services through the member's employing institution or agency. The policies of a particular agency may make explicit provisions for private practice with agency counselees by members of its staff. In such instances, the counselees must be apprised of other options open to them should they seek private counseling services.

8. It is unethical to use one's institutional affiliation to recruit counselees for one's private practice.

Section F: Personnel Administration

It is recognized that most members are employed in public or quasi-public institutions. The functioning of a member within an institution must contribute to the goals of the institution and vice versa if either is to accomplish their respective goals or objectives. It is therefore essential that the member and the institution function in ways to: (a) make the institution's goals explicit and public; (b) make the member's contribution to institutional goals specific; and (c) foster mutual accountability for goal achievement.

To accomplish these objectives it is recognized that the member and the employer must share responsibilities in the formulation and implementation of personnel policies.

1. Members should define and describe the parameters and levels of their professional competency.

2. Members should establish interpersonal relations and working agreements with supervisors and subordinates regarding counseling or clinical relationships, confidentiality, distinction between public and private material, maintenance and dissemination of recorded information, work load, and accountability. Working agreements in each instance should be specified and made known to those concerned.

3. Members are responsible for alerting their employers to conditions that may be potentially disruptive or damaging.

4. Members are responsible for informing employers to conditions that may limit their effectiveness.

5. Members are expected to submit regularly to review and evaluation.

6. Members are responsible for inservice development of self and/or staff.

7. Members are responsible for informing their staff of goals and programs.

8. Members are responsible for providing personnel practices that guarantee and enhance the rights and welfare of each recipient of their service.

9. Members are expected to select competent persons and assign responsibilities compatible with their skills and experiences.

Section G: Preparation Standards

Members who are responsible for training others should be guided by the preparation standards of the Association and relevant division(s). The member who functions in the capacity of trainer assumes unique ethical responsibilities that frequently go beyond that of the member who does not function in a training capacity. These ethical responsibilities are outlined as follows:

1. Members are expected to orient trainees to program expectations, basic skills development, and employment prospects prior to admission to the program.

2. Members in charge of training are expected to establish programs that integrate academic study and supervised practice.

3. Members are expected to establish a program directed toward developing the trainees' skills, knowledge, and self-understanding, stated whenever possible in competency or performance terms.

4. Members are expected to identify the level of competency of their trainees. These levels of competency should accommodate the paraprofessional as well as the professional.

5. Members, through continual trainee evaluation and

appraisal, are expected to be aware of the personal limitations of the trainee that might impede future performance. The trainer has the responsibility of not only assisting the trainee in securing remedial assistance, but also screening from the program those trainees who are unable to provide competent services.

6. Members are expected to provide a program that includes training in research commensurate with levels of role functioning. Paraprofessional and technician-level personnel should be trained as consumers of research. In addition, these personnel should learn how to evaluate their own and their program effectiveness. Advanced graduate training, especially at the doctoral level, should include preparation for original research by the member.

7. Members are expected to make trainees aware of the ethical responsibilities and standards of the profession.

8. Training programs are expected to encourage trainees to value the ideals of service to individuals and to society. In this regard, direct financial remuneration or lack thereof should not influence the quality of service rendered. Monetary considerations should not be allowed to overshadow professional and humanitarian needs.

9. Members responsible for training are expected to be skilled as teachers and practitioners.

10. Members are expected to present thoroughly varied theoretical positions so that trainees may make comparisons and have the opportunity to select a position.

11. Members are obligated to develop clear policies within their training institution regarding field placement and the roles of the trainee and the trainer in such placements.

12. Members are expected to ensure that forms of training focusing on self-understanding or growth are voluntary, or if required as part of the training program, are made known to prospective trainees prior to entering the program. When the training program offers a growth experience with an emphasis on self-disclosure or other relatively intimate or personal involvement, the member should have no administrative, supervisory, or evaluative

authority regarding the participant.

13. Members are obligated to conduct a training program in keeping with the most current guidelines of the American Personnel and Guidance Association and its various divisions.

APPENDIX B

AMERICAN SCHOOL COUNSELOR ASSOCIATION
CODE OF ETHICS

AMERICAN SCHOOL COUNSELOR ASSOCIATION

CODE OF ETHICS

1. Responsibilities of the school counselor stem from these basic premises and basic tenets in the counseling process.

   A. Each person has the right to dignity as a human being.

      1. without regard to race, sex, religion, color, socioeconomic status.

      2. without regard to the nature and results of behavior, beliefs and inherent characteristics.

   B. Each person has the right to individual self-development.

   C. Each person has the right to self-direction and responsibility for making decisions.

   D. The school counselor, equipped with professional competency, an understanding of the behavioral sciences and philosophical orientation to school and community, performs a unique, distinctive and highly specialized service within the context of the education purpose and structure of the school system. Performance of this rests upon acquired techniques and informed judgment which is an integral part of counseling. Punitive action is not a part of the counseling process. The school counselor shall use these skills in endeavoring constantly to insure that the counselee has the afore-mentioned rights and a reasonable amount of the counselor's time.

   E. The ethical conduct of the school counselors will be consistent with the state regulations.

   F. The school counselor may share information gained in the counseling process for essential consultation with those appropriate persons specifically concerned with the counselee. Confidential information may be released only with consent of the individual except when required by court order.

I. Principal responsibilities of the school counselor to PUPILS.

A. The school counselor

1. has a principal obligation and loyalty to respect each person as a unique individual and to encourage that which permits individual growth and development.

2. must not impose consciously his attitudes and values on the counselee though he is not obligated to keep his attitudes and values from being known.

3. should respect at all times the confidences of the counselee; should the counselee's condition be such as to endanger the health, welfare, and/or safety of self or others, the counselor is expected to report this fact to an appropriate responsible person.

4. shall be knowledgeable about the strengths and limitations of tests; will share and interpret test information with the counselee in an accurate, objective and understandable manner to assist the counselee in self-evaluation.

5. shall assist the counselee in understanding the counseling process in order to insure that the persons counseled with understand how information obtained in conferences with the counselor may be used.

II. Principal responsibilities of the School Counselor to PARENTS

A. The school counselor

1. shall use discretion, within legal limits and requirements of the state in releasing

personal information about a counselee to maintain the confidences of the counselee.

2. shall contribute pertinent data to cumulative records and make it accessible to professional staff (except personal factors and problems which are highly confidential in nature.)

3. shall cooperate with colleagues by making available as soon as possible requested reports which are accurate, objective, meaningful and concise.

4. shall cooperate with other pupil personnel workers by sharing information and/or obtaining recommendations which would benefit the counselee.

5. may share confidential information when working with the same counselee, with the counselee's knowledge and permission.

6. must maintain confidentiality even though others may have the same knowledge.

7. shall maintain high professional integrity regarding fellow workers when assisting in problem areas related to actions, attitudes and competencies of faculty or colleagues.

IV. Principal responsibilities of the School Counselor to SCHOOL AND COMMUNITY

A. The school counselor

1. shall support and protect the educational program against any infringement which indicates that it is not to the best interest of the counselee or program.

2. must assume responsibility in delineating his role and function, in developing educational procedure and program, and in assisting administration to assess accountability.

3. shall recommend to the administration any curricular changes necessary in meeting

valid educational needs in the community.

4. shall work cooperatively with agencies, organizations and individuals in school and community which are interested in welfare of youth.

5. shall, with appropriate release, supply accurate information according to his professional judgment to community agencies, places of employment and institutions of higher learning.

6. should be knowledgeable on policies, laws, and regulations as they relate to the community, and use educational facilities accordingly.

7. shall maintain open communication lines in all areas pertinent to the best interest of counselees.

8. shall not accept remuneration beyond contractual salary for counseling any pupil within the school district. The counselor shall not promote or direct counselees into counseling or educational programs which would result in remuneration to the counselor.

9. shall delineate in advance his responsibilities in case of any confrontation and have an agreement which is supported by the administration and the bargaining agency.

V. Principal responsibilities of the School Counselor to SELF

A. the school counselor

1. should continue to grow professionally by:

   a. attending professional meetings

   b. actively participating in professional organizations

   c. being involved in research

d. keeping abreast of changes and new trends in the profession and showing a willingness to accept those which have proved to be effective.

2. should be aware of and function within the boundaries of his professional competency.

3. should see that his role is defined in mutual agreement among the employer, students to be served, and the counselor. Furthermore, this role should be continuously clarified to students, staff, parents, and community.

VI. Principal responsibilities of the School Counselor to the PROFESSION

A. The school counselor

1. should be cognizant of the developments in his profession and be an active contributing participant in his professional association--local, state and national.

2. shall conduct himself in a responsible manner and participate in developing policies concerning guidance.

3. should do research which will contribute to professional and personal growth as well as determine professional effectiveness.

4. shall under no circumstances undertake any group encounter or sensitivity sessions, unless he has sufficient professional training.

5. shall, in addition to being aware of unprofessional practices, also be accountable for taking appropriate action to eliminate these practices.

Accepted by the American School Counselor Association Governing Board in October, 1972.

APPENDIX C

NATIONAL EDUCATION ASSOCIATION CODE OF ETHICS

CODE OF ETHICS OF THE EDUCATION PROFESSION

Adopted by the
NEA Representative Assembly, July 1975

PREAMBLE

The educator, believing in the worth and dignity of each human being, recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nurture of democratic principles. Essential to these goals is the protection of freedom to learn and to teach and the guarantee of equal educational opportunity for all. The educator accepts the responsibility to adhere to the highest ethical standards.

The educator recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of students, of parents and of the members of the community provides the incentive to attain and maintain the highest possible degree of ethical conduct. The Code of Ethics of the Education Profession indicates the aspiration of all educators and provides standards by which to judge conduct.

The remedies specified by the NRA and/or its affiliates for the violation of any provision of this Code shall be exclusive, and no such provision shall be enforceable in any form other than one specifically designated by the NEA or its affiliates.

PRINCIPLE I

COMMITMENT TO THE STUDENT

The educator strives to help each student realize his or her potential as a worthy and effective member of society. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals.

In fulfillment of the obligation to the student, the educator—

1. Shall not unreasonably restrain the student from independent action in the pursuit of learning.
2. Shall not unreasonably deny the student access to varying points of view.
3. Shall not deliberately suppress or distort subject matter relevant to the student's progress.
4. Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.
5. Shall not intentionally expose the student to embarrassment or disparagement.

6. Shall not on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, family, social or cultural background, or sexual orientation unfairly:

   a. Exclude any student from participation in any program;

   b. Deny benefits to any student;

   c. Grant any advantage to any student.

7. Shall not use professional relationships with students for private advantage.

8. Shall not disclose information about students obtained in the course of professional service, unless disclosure serves a compelling professional purpose or is required by law.

PRINCIPLE II

COMMITMENT TO THE PROFESSION

The education profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service.

In the belief that the quality of the services of the education profession directly influences the nation and its citizens, the educator shall exert every effort to raise professional standards, to promote a climate that encourages the exercise of professional judgment, to achieve conditions which attract persons worthy of the trust to careers in education, and to assist in preventing the practice of the profession by unqualified persons.

In fulfillment of the obligation to the profession, the educator—

1. Shall not in an application for a professional position deliberately make a false statement or fail to disclose a material fact related to competency and qualifications.
2. Shall not misrepresent his/her professional qualifications.
3. Shall not assist entry into the profession of a person known to be unqualified in respect to character, education, or other relevant attribute.
4. Shall not knowingly make a false statement concerning the qualifications of a candidate for a professional position.
5. Shall not assist a non-educator in the unauthorized practice of teaching.
6. Shall not disclose information about colleagues obtained in the course of professional service unless disclosure serves a compelling professional purpose or is required by law.

7. Shall not knowingly make false or malicious statements about a colleague.

8. Shall not accept any gratuity, gift, or favor that might impair or appear to influence professional decisions or actions.

PROVISIONS FOR NATIONAL ENFORCEMENT

CONSTITUTION,

NATIONAL EDUCATION ASSOCIATION

ARTICLE VII, Section 2, a. The Review Board shall have original jurisdiction in the following cases:

1. Impeachment of an officer who is a member of the Executive Committee;
2. Alleged violations of the Code of Ethics of the Education Profession.

ARTICLE VII, Section 2, b. The Review Board shall have the following powers subject to the conditions as herein outlined:

1. To impeach an officer. The officer shall have the right to appeal to the Board of Directors;
2. To censure, suspend, or expel a member for violation of the Code of Ethics of the Education Profession....The member shall have the right to appeal to the Executive Committee on procedural grounds only.

3. To vacate censure, lift suspension, or reinstate a member.

ARTICLE VII, Section 4. The Review Board shall establish its rules of procedure with the approval of the Board of Directors. Due process must be guaranteed in all its proceedings.

ADHERENCE TO THE CODE

CONSTITUTION,

NATIONAL EDUCATION ASSOCIATION

ARTICLE II, Section 2, b. Members engaged in teaching or in other educational work shall adhere to the Code of Ethics of the Education Profession.

ARTICLE IV, Section 6. Executive officers of the Association may be impeached for violation of the Code of Ethics of the Education Profession,......

ARTICLE VI, Section 4. Officers of the Association may be impeached for violation of the Code of Ethics of the Education Profession,......

ARTICLE VII, Section 5, a. Members of the Review Board may be impeached (by the Executive Committee) for violation of the Code of Ethics of the Education Profession,.....

APPENDIX D

CASE OF BEN WORRIED

BEN WORRIED

Ben, a 17-year old male, comes to the counseling office and indicates that he has a health problem, about which he is very concerned, worried, afraid, and embarrassed. From his description of symptoms it appears that he has contracted venereal disease. Ben also tells that a number of his friends, "steady" couples, are planning a "party" which could result in some partner swapping. The school nurse is his mother's best friend and he feels that he, therefore, cannot trust her. He has not discussed his problem with his parents because of their puritanical religious views. He refuses to see the family doctor because a bill would eventually be sent to his parents requiring an explanation. Because of his embarrassment he likewise has not discussed his problem with his girlfriend. The situation appears to be one in which only two people are aware: the counselee, frozen by fear, without a course of action, and the counselor, having no clear cut course of action because of inexperience.

The counselor has several courses of action open to him. He can discuss the situation with no one. He can seek the advice of the department chairman or the principal, with or without revealing the identity of the student. He can contact the parents. He can contact the family doctor to see if the problem can be dealt with, without parental awareness. The course of action selected is important for it will affect (at least with Ben) his trust in the particular counselor, the professional reputation of counselors in general, and the ability of the school to deal with non-academic concerns. The relationship between the counselor and the principal, the relationship between the school and the parents, and the relationship between the school and the general community will also be affected.

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